

# APPENDIX Q

Documentation on the Public  
Hearing Comments and the  
Responses  
(June 19, 2001)

# **Appendix Q: Documentation on the Public Hearing Comments and the Responses (June 19, 2001)**

## **Introduction**

The Clark County Board of County Commissioners held a public hearing on April 17, 2001 to receive public input on the March 2001 Draft PM<sub>10</sub> State Implementation Plan for Clark County. In response to comments received (see Appendix P) changes were made to the draft PM<sub>10</sub> plan which resulted in a second public hearing being held on June 19, 2001 to receive public input on the updated draft plan and on County responses to the comments received at the first public hearing.

This Appendix Q provides documentation of the comments received at the Clark County Commission Chambers on June 19, 2001, and County responses to comments.

The list below identifies the comments received and the sequence in which they are presented in this appendix. Responses immediately follow the respective comments.

## **Sequence of Comments Received and the Responses**

Testimony at Public Hearing on June 19, 2001:

Edward Lubbers, Construction Industry Coalition – Written comments provided

Robert Hall, Nevada Environmental Coalition – Written comments provided

Written comments received by facsimile or hand delivered:

Bruce Waggoner Letter, June 15, 2001

The Lubbers Law Group Letter, June 19, 2001

Robert Hall, NEC, Combined Comment/Petition Document, June 18, 2001

Sierra Club Letter, Southern Nevada Group, June 19, 2001

## **PM<sub>10</sub> SIP Comments from 6/19/01 BCC Public Hearing**

### **Speaker #1: Edward Lubbers, The Lubbers Law Group, on behalf of the Construction Industry Coalition**

Submitted a letter to the Board supporting and encouraging adoption of the PM<sub>10</sub> Plan. Mr. Lubbers' comments briefly summarized the letter. He noted that his coalition had been actively involved with County and Air Quality Division staff in formulating the Series 90 dust control regulations for the Clark County Health District. He expressed the Construction Industry Coalition's support of the draft PM<sub>10</sub> State Implementation Plan and encouraged its adoption by the Clark County Board of Commissioners.

Comments noted. Mr. Lubbers' submitted letter is included in this Appendix.

### **Speaker #2: Robert Hall, Nevada Environmental Coalition**

Submitted a 52 page combined comment/petition document to the Board and made comments to the Board as summarized below:

1. Attainment cannot be shown without reduction in construction acreage.
2. When the previous plans were rescinded, the area went into a lapse, and there is no legal authority for extension of attainment dates.
3. Questioned accuracy of air quality monitoring data, and noted that sites were taken down when it appeared an exceedance would be recorded.
4. Recommended new people are hired with engineering and legal background that can address and solve the air quality problems.
5. Noted the discrepancy between the BLM Disposal Boundary used in the plan for the attainment demonstration and the nonattainment area boundary. Attainment must be demonstrated for the entire nonattainment area.
6. Brought attention to the background material provided in his document beginning on page 46.

Comments noted. Mr. Hall's submitted document addresses the issues in detail. The comment/petition document and responses to the comments are included in this Appendix.

Date: June 15, 2001

To: Dennis Ransel  
Air Quality Planning Team  
Department of Comprehensive Planning  
Clark County Government Center  
500 S. Grand Central Parkway, Suite 3012  
Las Vegas, NV 89144-1741  
tel: (702) 455-4181 fax: (702) 385-8940

From: Bruce Waggoner  
2196 E. Ford Avenue [APN 177-14-701-023]  
Las Vegas, NV 89123  
tel: (702) 896-1858 (w)

Re: Revised PM10 State Implementation Plan Comments

Please accept the following comments regarding the revised PM10 State Implementation Plan which is scheduled for a public hearing on June 19, 2001 (I will be out of town and thus unable to attend). Also reference my letter dated April 13, 2001, to Catherine McDougal regarding the draft plan, and Clark County's 2-page response to my letter, both of which are included in "Appendix P" of the revised plan.

1) I complained about recreational dust generating activities in my neighborhood (from OHV's), and the Las Vegas Metropolitan Police Department's apparent refusal to enforce existing laws in that regard. Clark County responded by saying that Police Department procedures are not germane to the SIP, and suggested that I call the Clark County Air Quality Division Enforcement Section (CCAQDES) at 702-383-1276 if I ever have a problem. It is my understanding that CCAQDES personnel do not have any police powers with respect to OHV's. If nobody in Clark County is going to enforce OHV laws, then damage to soils and vegetation will continue unabated. This has to be part of an effective plan.

2) I noted that damage to soils and vegetation on properties adjacent to construction sites must be controlled just as much as the construction sites themselves. Clark County's response suggested that I call CCAQDES after the damage has occurred and after the site is emitting excessive dust. A comprehensive dust plan which is to have a chance of working must address this issue from a proactive, not reactive, standpoint.

3) I asked Clark County to change its fencing regulations so that it becomes fast and easy (from a legal standpoint) to erect temporary fences around vacant parcels to keep out OHV's. I also asked Clark County to change their property tax structure so that such temporary dust prevention fences are exempt from property taxes. Both requests appear to have been completely ignored.

4) On numerous occasions I have asked Clark County for assistance with keeping cut-through (dust generating) traffic out of our dirt and gravel road neighborhood. To its credit, Clark County recently paved about 1,650 feet of Clark County maintained roads in one corner of our neighborhood, and I understand that more roads are scheduled to be paved within the next 3 years. However, most of the roads within our neighborhood are not Clark County maintained, and thus are not scheduled to be paved at all. According to Clark County, these roads do not even exist, but that official opinion doesn't prevent people from driving on them. Clark County needs to commit to traffic engineering measures which divert people away from dirt roads and shoulders as part of its PM10 dust abatement plans.

5) I asked that roads in 25mph residential areas be paved with 2' shoulders instead of 4' shoulders, in an effort to keep vehicle speeds down. Clark County's response indicates that 4' shoulders are needed to keep dirt from being tracked onto the pavement. I accept that reasoning to some extent. However, the roads recently paved in our neighborhood left a 15' wide dirt gap between the new roads and all residential driveways, most of which are paved. To do the job right, and to keep dirt from being tracked onto the roads, there need to be paved transitions between paved driveways and paved roads. This needs to be part of the PM10 paving plan.

6) I am glad that Clark County is not advocating excessive speed and other unsafe driving practices on the unpaved roads in the County. However, lack of enforcement of existing traffic laws is viewed by many motorists as tacit approval of such behaviors. Clark County's response indicates that CCAQDES personnel can enforce traffic laws on unpaved roads in Clark County, but I am quite sure that is not the case.

7) Since my April 13th letter, there was one severe case of OHV activities on the mix of BLM and private land (about 20 acres) south of my residence. I called the police, and they refused to respond. They did transfer me to BLM dispatch, and a BLM ranger did show up, but 40 minutes after the fact, by which time the perpetrator was long gone. Because most OHV's do not have license plates, it is almost impossible to determine who the guilty parties are. Prompt police enforcement of OHV violations has to be a part of the overall dust control plan.

(continued)

JUN-15-01 10:15 FROM:ADRIANAME 11230 11

8) Of the 10 items in my April 13th letter, Clark County's official response suggested 8 different times that I call CCAQDES whenever a dust problem occurs in my neighborhood. Here's how it really works here. On March 13, 2001, I faxed a letter to CCAQD's Lewis Wallenmeyer, who I understand is in charge of the enforcement division. I requested that the 20 acres of BLM and private land south of my residence be fenced off to prevent OHV access. Nothing happened for several months, so I called Lewis on 5/23, 5/31, and 6/4, and Lewis never called back. I called his boss on 6/6, and finally Lewis called back on 6/7. Apparently nothing had been done regarding my request. On 6/14/01 I noticed David Ruth of CCAQDES on-site with a BLM representative, so at least something is starting to happen. I realize that CCAQDES is hiring people and just getting started, and that there is a huge inventory of dust generating parcels within Clark County. However, for Clark County to suggest that I call CCAQDES whenever I have a dust problem which needs to be solved, then to have absolutely nothing happen for over 90 days when I do so, calls into question the legitimacy of almost all of Clark County's replies to my original questions.

9) Clark County has a history of making laws and plans, then largely ignoring them. I am assuming here that the EPA is genuinely concerned with reducing dust emissions in the Las Vegas Valley. Based upon my experiences, it would be a mistake to grant Clark County an automatic 5 year extension, then spend another couple years doing studies, drafting reports, etc. thereafter, only to find that Clark County has done little towards obtaining compliance. Some kind of milestones need to be erected along the way so that Clark County can demonstrate that it is actually reducing dust emissions in the Las Vegas Valley. Publishing reports and plans alone does not reduce dust emissions. The actual paving of roads, fencing of problem parcels, and enforcement of applicable laws is what it takes.

Please call me if you have any questions.

Sincerely,



Bruce Waggoner, M.S.E.E. Stanford 1979

Response to comments in letter from Bruce Waggoner, dated June 15, 2001:

1. Air Quality Regulations (AQR) were developed and adopted to protect human health with an adequate margin of safety, as well as provide for the protection of both private and public lands. AQR Section 90 (Fugitive Dust from Open Areas and Vacant Lots) enables enforcement staff to take action on property owners who allow trespassing on their respective properties that have not been stabilized for Off Highway Vehicle (OHV) use. You are correct in your statement about Enforcement Staff not having police powers. Additionally, Police Department procedure is not germane to the SIP. However, it is expected that if individual property's are properly posted (signage), stabilized, and barriers, berms, or fencing are in place (as required by AQR Section 90); Police Department personnel will take appropriate action as required for this criminal activity (trespass).
2. AQR Section 94 (Permitting and Dust Control for Construction Activities) strictly requires that construction sites prevent and control fugitive dust for their material storage areas, staging areas or parking areas in conjunction with their permit for their construction activity. Further, if dust is generated in areas that are not provided for in their permit, then the Clark County Air Quality Division Enforcement Staff can issue a Notice of Violation (NOV). If the disturbance is under the condition of AQR Section 90, as discussed above, then the procedure to address that scenario is detailed in the regulation for disturbed vacant land.
3. The AQD is currently heading a working group consisting of planning and public works agencies from Clark County, the cities of Las Vegas, North Las Vegas, and Henderson, and the Clark County Assessor to address these issues. This group is currently reviewing city and county permit and structural requirements for erecting temporary fencing and other barriers for the purpose of dust control. The Clark County Assessor has stated that temporary fencing erected for dust control will not and has not increased property assessments. However, permanent structures, such as block walls erected around parcels would trigger an increase in the assessed value of the property.
4. All roads will be paved in the next 3 years whether private or public if their average daily traffic (ADT) exceeds 150 ADT. Where a road is found to exhibit excessive fugitive dust from vehicular travel, or other vehicular activity; this road will be identified for paving or stabilization within a 365-day time frame from the initial discovery that average daily traffic (ADT) exceeds 150 ADT or that the road surface does not comply with stabilization standards (AQR Section 91, pg 91-2). Clark County has no

authority to divert traffic or block traffic from non-County owned and maintained roads.

5. The 32' requirement for road width will be the standard throughout all of Clark County. Clark County Public Works is working on plans to address the easement/right of way situation (gap between road and driveways) throughout Clark County, as part of the overall dust control program and strategies.
6. Clark County Air Quality Division enforcement staff do not have traffic enforcement authority on any road within the County, whether paved or not. Clark County apologizes for any misunderstanding regarding this issue.
7. Comments noted. Clark County staff are continuing to work with local law enforcement agencies for prompt trespass complaint resolution.
8. The effectiveness of enforcement staff to enforce dust control activities was estimated to be less than 80% during the first year. As a SIP commitment, the increase of enforcement staffing (full strength staffing) by January 2002, will result in the enforcement capabilities and effectiveness of this commitment to a level greater or equal to the EPA default value for rule effectiveness of 80% (see Appendix L – Overall Control Measure Reductions, pages L-1 through L-2).
9. The five-year extension is not automatic. Clark County has reasonable further progress (RFP) milestone commitments in the SIP. Further, requirements for an extension of the attainment date, are outlined in Chapter 7. Lastly, as required by the U. S. EPA, if Clark County does not meet these milestones, the result could be a Federal Implementation Plan (FIP) action (See Appendix M).



# THE LUBBERS LAW GROUP

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2500 West Sahara Avenue  
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Las Vegas, Nevada 89102

U.S. Mail  
 Certified Mail  
 Facsimile  
 Overnight  
 Hand Delivery  
 E-Mail

June 19, 2001

John L. Schlegel, AICP  
Director of Department of  
Comprehensive Planning  
Clark County  
500 S. Grand Central Parkway  
P. O. Box 551741  
Las Vegas, NV 89155-1741

Re: Draft PM10 State Implementation Plan  
Our File No. 99003-010

Dear John:

This letter is being sent on behalf of the Construction Industry Coalition, sometimes referred to as the Building Industry Coalition, that was formed for the purpose of addressing the issues arising with the required State Implementation Plan for PM10, and particularly enforcement regulations for the Air Quality Division of the Clark County Health District. The Coalition is comprised of the following members: (1) Southern Nevada Home Builders Association; (2) National Association of Industrial and Office Properties, Southern Nevada Chapter; (3) the Del Webb Corporation; (4) the Howard Hughes Corporation; (5) Associated General Contractors; (6) Associated Builders and Contractors; and (7) Nevada Contractors' Association.

As you know, the Coalition was actively involved with your staff and the Air Quality Division staff in formulating the Series 90 regulations for the Clark County Health District which were ultimately adopted and now form an important part of the draft PM10 SIP. We have now received a copy of the draft PM10 SIP.

Although the SIP is somewhat technical in certain aspects, we believe that the draft SIP is complete as required under Federal law, accurately addresses the required inventory of PM10 emissions, demonstrates the PM10 control measures now in place and in effect, or to be in effect in the near future, shows how these control measures satisfy the BACM requirements, and, finally, adequately demonstrates attainment of the PM10 NAAQS. We believe that the requested extension from the year 2001 to the year 2006 is supported by the SIP and the reasons that it should be granted are well documented.

X:\Docs\Commercial\SNHB\Health District\Schlegel.Ltr.06.19.01.wpd

(702) 257-7575 • Fax (702) 257-7572 • E-mail: (writer's first initial and last name )@lubberslaw.com

# THE LUBBERS LAW GROUP

John L. Schlegel, AICP  
June 19, 2001  
Page 2

On behalf of the Coalition, we support the draft PM10 SIP and the extension requested within the SIP. We believe once the plan is implemented and enforced that great progress will be made in terms of air quality in the valley and that the NAAQS for PM10 will be attained within the time period requested.

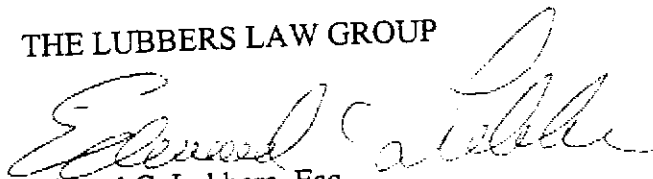
Air quality is obviously an issue of major concern to the residents of this valley. It is definitely a concern to the members of those organizations and companies that comprise the Coalition and to their employees and families. We believe that the responses we have received from the construction industry and the responses that the Conservancy District has received from its mass mailing shows that the public is willing to do its part to achieve improved air quality in this valley. We believe the fact that these responses show support for the plan as opposed to resistance will go a long way toward this valley achieving its goals, and we believe that is directly attributable to the County's and the Health District's desire to work with the private sector to come with a plan which respects all of the interests involved.

On behalf of the Coalition, we support the draft PM10 State Implementation Plan and encourage its adoption by the Clark County Board of Commissioners for ultimate delivery to the Environmental Protection Agency.

If there is anything further that we could do to be of assistance to you in having the SIP adopted, or if there is anything we need to do at the Federal level, please do not hesitate to contact us.

Very truly yours,

THE LUBBERS LAW GROUP



Edward C. Lubbers, Esq.

ECL:da

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY;  
STATE OF NEVADA by and through its GOVERNOR,  
KENNY GUINN; CLARK COUNTY COMMISSION;  
CLARK COUNTY HEALTH DISTRICT &  
CLARK COUNTY DEPARTMENT OF  
COMPREHENSIVE PLANNING,  
CLARK COUNTY NEVADA

.....X  
In the Matter of:

NEVADA ENVIRONMENTAL COALITION INC.'s  
Revised Comments re: Draft PM-10 State Implementation  
Plan for Clark County (Nevada), May 2001;  
Certificate of Service.

.....X  
**(1) CLARK COUNTY/STATE OF NEVADA/EPA COMMENTS AND (2) U.S.  
ENVIRONMENTAL AGENCY (EPA) PETITION FOR IMMEDIATE, EMERGENCY  
ADMINISTRATIVE ACTION SUBMITTED ON BEHALF OF THE  
NEVADA ENVIRONMENTAL COALITION, INC. AND ROBERT W. HALL**

**INTRODUCTION**

Petitioner Robert W. Hall, as an individual and in his capacity as president of the Nevada Environmental Coalition, Inc. (hereinafter "Petitioner"), hereby submits the following U.S. Environmental Protection Agency ("EPA"), State of Nevada (by and through its Governor, Kenny Guinn ("Nevada"), Clark County Commission ("CCC"), Clark County Health District ("CCHD"), and Clark County Department of Comprehensive Planning ("CCDCP"), combined, comment/petition document. This combined comment document is filed as comment document regarding the State Implementation Plan ("SIP") submittal dated May 2001 and as described herein, without prejudice if filed during a noticed comment period or earlier than a noticed comment period. **This transmittal by electronic means and/or paper, is also an EPA petition for immediate, emergency administrative action for the adoption of a Federal Implementation Plan ("FIP") without further delay** (hereinafter "Petition").<sup>1</sup> This Petition is

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<sup>1</sup> This combined Clark County/Nevada/EPA comment/petition document is served on the EPA separately from the service on Clark County for a separate legal purpose. It is the intention of the Petitioner Hall that this document be made a part of the Administrative Record for any subsequent administrative review of the above-named Plan whether it was received during or before any noticed comment period. In addition thereto, this document constitutes a request for

submitted to the EPA, Nevada and Clark County in opposition to the adoption of the above-named particulate matter 10 microns or less (PM-10) State Implementation Plan, hereinafter "Plan," for the Las Vegas Valley nonattainment area in Clark County, Nevada. The Plan was revised and the date of the Plan was changed from March 2001 with a public notice date of March 6, 2001, to May 2001 and a May 15, 2001 notice date of May 15, 2001.

In submitting the instant petition, Petitioner does not waive any right. This Petition is submitted without prejudice to any of the Petitioner's rights.

The Nevada Environmental Coalition, Inc. ("NEC") is a research and advocacy, public service and oversight organization that concentrates on Clark County environmental issues. NEC's supporting organizations and NEC associates live, work, pay taxes, and breathe the air in Clark County Nevada where the NEC is located.

### **HISTORICAL**

Nevada has repeatedly failed or refused to make particulate matter (PM-10), nonattainment area state implementation plan ("SIP") submittals required for the Las Vegas Valley Planning Area under the Clean Air Act ("CAA"). The Las Vegas Planning Area was originally classified as a moderate PM-10 nonattainment area, but was later reclassified as serious. Under certain provisions of the CAA, reasonable further progress and attainment of the PM-10 national ambient air quality standards ("NAAQS") in areas classified as moderate and serious. The State of Nevada submitted several plans intended to meet these requirements. On June 14, 2000, EPA proposed to disapprove these SIP submittals. On December 5, 2000, prior to any final action by EPA, the State of Nevada withdrew the submittals. As a result of the State's withdrawal of the moderate and serious area SIP submittals, EPA noticed a finding that Nevada failed to make the PM-10 nonattainment area SIP submittals required for the Las Vegas Valley Planning Area under the CAA. See 66 FR 1046-1050, January 5, 2001 and 40 CFR Part 52.

According to the EPA, the withdrawal of the SIP submittals triggered an 18-month time clock for mandatory application of sanctions and 2 year time clock for a federal implementation plan ("FIP") under the CAA. The EPA claimed that the notice of triggering a 2 year time clock for a federal implementation plan ("FIP") under the Act was consistent with the CAA mechanism for assuring SIP submissions.

### **Re: CAA Planning Requirements.**

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM-10 NAAQS.<sup>2</sup> Pub. L. 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q

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immediate, emergency EPA action for Clean Air Act ("CAA") sanctions against Clark County and the State of Nevada for the reasons enumerated herein.

<sup>2</sup> EPA revised the NAAQS for PM-10 on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulates with new standards applying only to particulate matter up to 10 microns in diameter (PM-10). At that time, EPA established two PM-10 standards. The annual PM-10 standard is attained when the expected annual arithmetic average of the 24 hour samples

(1991). On the date of enactment of the Amendments, PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the amended CAA were designated nonattainment by operation of law. These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and clarified in 55 FR 45799 (October 31, 1980), and any other areas violating the PM-10 NAAQS prior to January 1, 1989. The Las Vegas Valley Planning Area was identified in the August 7, 1987, Federal Register (52 FR 29384). A Federal Register action announcing all areas designated nonattainment for PM-10 at enactment of the 1990 amendments was published on March 15, 1991 (56 FR 11101). The boundaries of the Las Vegas Valley nonattainment area (Hydrographic Area 212) are codified at 40 CFR 81.329.

Once an area is designated nonattainment, section 188 of the amended CAA outlines the process for classification of the area and establishes the area's nonattainment date. In accordance with section 188(a), at the time of designation, all PM-10 nonattainment areas including Las Vegas Valley, were initially classified as moderate by operation of law. Section 188(b)(1) of the CAA further provides that moderate areas can subsequently be reclassified as serious before the applicable moderate area attainment date if at any time EPA determines that the area cannot "practicably" attain the PM-10 NAAQS by that date.

Air monitoring of the Las Vegas Valley during the past 18 years has measured some of the highest PM-10 pollution in the United States. Nevada submitted a moderate area PM-10 plan for the Las Vegas Valley on December 6, 1991. Based on this submittal, EPA determined on January 8, 1993, that the Las Vegas Valley could not practicably attain both the annual and 24-hour standards by the applicable attainment deadline for moderate areas (December 31, 1994, per section 188(c)(1) of the Act), and reclassified the Las Vegas Valley as serious (58 FR 3334). In accordance with section 189(b)(2) of the Act, SIP revisions for the Las Vegas Valley addressing the requirements for serious PM-10 nonattainment areas in section 189(b) and (c) of the Act were required to be submitted by August 8, 1994 and February 8, 1997.

The moderate and serious area requirements, as they currently pertain to the Las Vegas Valley nonattainment area, include<sup>3</sup>:

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for a period of one year does not exceed 50 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA reaffirmed the annual PM-10 standard, and slightly revised the 24 hour PM-10 standard (62 FR 38651). The revised 24 hour PM-10 standard is attained if the 99<sup>th</sup> percentile of the distribution of the 24 hour results over 3 years does not exceed  $150 \mu\text{g}/\text{m}^3$  at each monitor within an area.

The 2001 finding applied to the outstanding obligation of Nevada to submit plans for the Las Vegas Valley Planning Area addressing the 24 hour and annual PM-10 standards, as originally promulgated.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

<sup>3</sup> EPA has concluded that certain moderate area PM-10 requirements continue to apply after an area has been reclassified to serious. For a more detailed discussion of the planning requirements applicable to the Las Vegas Valley and the relationship between the moderate area and serious

(a) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or an alternative demonstration that attainment by that date would be impracticable and that the plan provides for attainment by the most expeditious alternative date [Page 1047] practicable (CAA section 189(b)(1)(A)(i) and (ii));

(b) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress toward attainment by December 31, 2001 (CAA section 189(c)).

(c) Provisions to assure that reasonably available control (RACM), including reasonably available control technology (RACT), measures shall be implemented as soon as practicable (CAA section 189(a)(1)(C)); and

(d) Provisions to assure that the best available control measures (BACM), including best available control technology (BACT) shall be implemented no later than four years after the reclassification of the area to a serious nonattainment area (CAA section 189(b)(1)(B)).

#### **B. Nevada's PM-10 SIP Submittals for the Las Vegas Valley**

The State of Nevada has submitted the following plans that were prepared by the Clark County Department of Comprehensive Planning (CCDCP) to address the CAA's moderate and serious area requirements for the Las Vegas Valley Planning Area:

1. The PM-10 moderate area nonattainment plan titled "PM-10 Air Quality Implementation Plan, Las Vegas Valley, Clark County, Nevada" (1991 Moderate Plan), submitted to EPA on December 6, 1991;
2. An "Addendum to the 'Moderate Area' PM-10 State Implementation Plan for the Las Vegas Valley" (1995 RACM Addendum), submitted to EPA on February 15, 1995;
3. A BACM analysis plan titled "Providing for the Evaluation, Adoption and Implementation of Best Available Control Measures and Best Available Control Technology to Improve PM-10 Air Quality" (1994 BACM Plan), submitted to EPA on December, 1994; and
4. The PM-10 serious area nonattainment plan for the Las Vegas Valley nonattainment area titled "Particulate Matter (PM-10) Attainment Demonstration Plan" (1997 Serious Plan), submitted to EPA on August 25, 1997.

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area requirements after the reclassification of the area to serious. See 65 FR 37324-37326 (June 14, 2000).

The term "Moderate Area SIP" in this action refers collectively to the 1991 Moderate Plan and the 1995 RACM Addendum; "Serious Area SIP" refers collectively to the 1994 BACM Plan and the 1997 Serious Plan. These submittals became "complete" by operation of law but were not approved.<sup>4</sup>

### C. EPA Actions Relating to Nevada's PM-10 SIP Submittals for the Las Vegas Valley

On June 14, 2000, EPA proposed to disapprove both the Moderate Area SIP and the Serious Area SIP for the Las Vegas Valley Planning Area. See 65 FR 37324. Two comments supporting the proposed action were received.

On December 5, 2000, prior to EPA's taking final action on its proposed disapproval, the State of Nevada withdrew the Moderate Area SIP and the Serious Area SIP. See letter dated December 5, 2000 from Allen Biaggi, Administrator of the Division of Environmental Protection, Nevada Department of Conservation and Natural Resources to Felicia Marcus, Regional Administrator, EPA Region 9.

The CAA establishes specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to the January 5, 2001 rulemaking because withdrawal of a plan is tantamount to failing to submit it.

In its January 5, 2001 findings, the EPA determined that if Nevada **has not made the required complete submittal** (in this case re-submittal) within 18 months of the effective date of its January 5, 2001 rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a **complete submission** 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.<sup>5</sup> The 18 month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that **the State has made a complete submittal** of a plan addressing the applicable moderate area and the serious area PM-10 requirements for the Las Vegas Valley.

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<sup>4</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>5</sup> In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. In its January 5, 2001 notice, EPA stated that it did not choose to deviate from the presumptive sequence. More details on the timing and implementation of the sanctions may be found at 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "*Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.*"

In addition, CAA section 110(c)(1) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a) unless EPA takes final action to approve the submittal within 2 years of EPA's finding. The EPA encouraged the responsible parties to **work together on a solution in a broad, open public process** which can result in the avoidance of the sanctions and a FIP.

#### **D. Recent Developments in Nevada**

Since November, 1998, the EPA has have been working with CCDCP to develop an approvable SIP that would replace the plans the EPA proposed to disapprove in June 2000. On October 30, 2000, EPA received a 60-day notice of intent to sue under section 304(a)(2) of the CAA from the Sierra Club alleging that the EPA had failed to take final action on the 1997 Serious Plan by the CAA deadline. While in the midst of finalizing the disapproval action, the State of Nevada withdrew both the Moderate Area SIP and Serious Area SIP from EPA consideration. As noted above, the withdrawal meant that the EPA could not finalize its proposed disapproval action and the Agency was compelled to find that the State of Nevada had failed to make the required SIP submissions for the Las Vegas Valley PM-10 nonattainment area.<sup>6</sup>

EPA noted in its January 5, 2001 notice that it was hopeful that in addition to withdrawing these plans, CCDCP intended to consult more broadly and openly with stakeholders concerned with the planning process and the EPA urged them to do so. The EPA noted that it was encouraged by recent efforts by CCDCP to develop an approvable PM-10 SIP that would replace the ones which were withdrawn.

EPA believed that some of the work found in the most recent CCDCP draft plan<sup>7</sup> would contribute towards attaining the 24-hour and annual PM-10 standards. The EPA stated as examples that Clark County had:

Adopted several new fugitive dust rules for significant sources, as well as some of the most advanced and stringent Best Management Practices for construction sites among PM-10 nonattainment areas,

Conducted studies to identify vacant land in the Las Vegas Valley and they are engaging in public outreach efforts to vacant land owners regarding compliance with new requirements, [Page 1048]

Committed to hire additional staff to conduct inspections of fugitive dust sources to ensure rule compliance, and,

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<sup>6</sup> EPA noted that the sanctions for failing to submit PM-10 plans are identical to those which would have been imposed had the EPA finalized its previously noticed disapproval action.

<sup>7</sup> This plan, which was informally submitted to EPA on September 11, 2000, is entitled "PM-10 State Implementation Plan for Clark County-September 2000 Draft." Some of this work is being currently implemented by the Clark County Health District.



Funded near-term research on standards/test methods for fugitive dust sources.

However, EPA noted that while they were encouraged by the work of CCDCP in developing an approvable PM-10 replacement SIP, they also identified significant concerns with the draft plan that they had reviewed so far. Specifically, EPA was concerned about:<sup>8</sup>

- (1) The underlying data (including whether or not all emission sources are included) which ultimately must result in an accurate emissions inventory,
- (2) How the use of the locally-implemented paved road offset program may affect attainment and conformity,
- (3) The plan's treatment of mobile source emissions growth,
- (4) The plan's incomplete or inadequate process for determining appropriate controls for the area and measurement standards/techniques for certain sources (RACM/BACM and the most stringent measures analysis under CAA section 188(e)),
- (5) The plan's inaccurate determination that BACT application is unnecessary at sources which are clearly subject to such federal requirements,
- (6) An overall strategy to attain which inappropriately assumes future construction occurring on all vacant land within the nonattainment area,<sup>9</sup>
- (7) Failure to integrate the conformity budget into the plan so that the budget and the plan can be shown to be working together towards attainment, and
- (8) Failure to address significant elements necessary to justify an extension of time to achieve attainment of PM-10 standards.

The EPA expressed the opinion that it was hopeful that by CCDCP working with the local agencies and business, environmental, and other stakeholders, our concerns will be addressed with the submittal of an approvable PM-10 SIP for the Las Vegas Valley area. Further, it is our understanding that CCDCP intends to adopt a plan which addresses our concerns on the following schedule:

January 5, 2001-CCDCP will send a second draft of their draft plan to EPA for comment,

March 20, 2001-CCDCP presents the draft plan to their Board and opens the public comment period on the plan,

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<sup>8</sup> This list is not exhaustive. See letter from Kenneth F. Bigos, EPA to John Schlegel, CCDCP, dated November 15, 2000 for additional details.

<sup>9</sup> EPA noted that this was consistent with concerns that the Sierra Club raised both in its comment letter on the June 14, 2000 proposed disapproval action, and in its October 30, 2000 notice of intent to sue EPA.

April 20, 2001-CCDCP will close the public comment period,

June 2001-CCDCP's Board will approve the plan, and

Late June 2001-State of Nevada will submit the plan to EPA for action.

In its final action dated January 5, 2001, the EPA stated as follows:

EPA is today making a finding that the State of Nevada failed to submit SIP revisions addressing the CAA's moderate and serious area PM 10 requirements to attain the 24-hour and annual PM-10 NAAQS for the Las Vegas Valley PM-10 nonattainment area. [Id. p. 1048]

#### B. Effective Date Under the Administrative Procedures Act

Today's action will be effective on December 20, 2000. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the Federal Register if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State has been aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

#### C. Notice-and-Comment Under the Administrative Procedures Act

This final agency action is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a non-substantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

## COMMENTS

### Reasonable Further Progress (RFP)/Quantitative Milestones

Both PM-10 moderate and serious area nonattainment SIPs demonstrating attainment must include quantitative milestones to be achieved every three years until the area is designated attainment and must demonstrate RFP toward attainment by the applicable date. CAA section 189(c)(1). Moderate area plans demonstrating impracticability must include annual incremental reductions in PM-10 emissions as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the PM-10 NAAQS by the applicable attainment date. CAA sections 172(c)(2) and 171(1). EPA has addressed these requirements in several guidance documents. See the General Preamble at 13539, the Addendum at 42015-42017, and the memorandum from Sally Shaver, EPA, to EPA Division Directors, "Criteria for Granting 1-Year Extensions of Moderate PM-10 Nonattainment Area Attainment Dates, Making Attainment Determinations, and Reporting on Quantitative Milestones," November 14, 1994 (Shaver memorandum). Of these guidance documents, the most comprehensive is the Addendum which discusses both the RFP annual incremental reduction requirement and the appropriate interpretation of the milestone requirement as it relates to moderate areas that have been reclassified to serious. EPA has considerable discretion in reviewing the SIP to determine whether the annual incremental emission reductions to be achieved are reasonable in light of the statutory objective of timely attainment. Addendum at 42015-42016.

With respect to the quantitative milestone requirement, for initial moderate areas, EPA concluded that the SIP should initially address at least two milestones and that the starting point for the first 3 year period would be the SIP submittal due date, i.e. November 15, 1991. EPA further concluded that since the time lag between that date and the December 31, 1994 attainment deadline was de minimis, emission reduction progress made between the submittal date and December 31, 1994 would satisfy the first milestone. The second milestone to be addressed by these initial moderate area SIPs was November 15, 1997. General Preamble at 131539, Addendum at 42016, and Shaver memorandum. For moderate areas that are reclassified as serious, the third milestone achievement date is November 15, 2000. Addendum at 42016. The quantitative milestones should consist of elements that allow progress to be quantified or measured, e.g., percent compliance with implemented control measures. Addendum at 42016.<sup>10</sup>

EPA will assess whether an area has achieved RFP in conjunction with determining compliance with the quantitative milestone requirement. Thus a state should address compliance with both requirements in its RFP/milestone reports. The contents of these reports is discussed in the General Preamble, its Addendum, and the Shaver memorandum.

1 Section 5.6 of the Plan (M-4) estimates the 1998 population within the "BLM disposal area at 1,153,667 people." The population for the BLM disposal area for 2003 was 1,541,672 souls or a growth ratio of 1.34. There is no requirement to estimate the population of the BLM

<sup>10</sup> The discussion relates what the EPA did. The information is presented without prejudice to the NEC's contention that the EPA had no legally sufficient, statutory authority to grant the extensions of time that were granted.

disposal area. There is a requirement to estimate the population in the moderate or serious nonattainment area. Emissions are apparently projected valley-wide. This mixing of measurement areas does not lead to credible data.

2 The valley-wide emissions data assumptions in the Plan are not credibly supported. As but one example, the FAA ranks McCarran Airport as the Ninth busiest airport in the United States, served by 28 air carriers. Passenger activity has increased from approximately 8.6 million enplanements in 1989 to approximately 16.9 million in 1999, a total increase of 96 percent. The increase represents an average annual growth of about 7 percent. The FAA noted a strong correlation between the number of available hotel/motel rooms in the Las Vegas area and the number of passengers enplaned at McCarran Airport. "Passenger enplanements are expected to increase to approximately 37.9 million by 2020, representing an average annual growth rate of 3.9 percent. Aircraft operations at McCarran are projected to increase from 542,922 in 1999 to 705,000 by 2001. See Draft Environmental Assessment, Four Corner-Post Plan, April 2001, Federal Aviation Administration.<sup>11</sup>

The Plan's Chapter 5 data for McCarran projects no increase in air pollution emissions. Chapter data indicates that McCarran is an insignificant source of annual and 24-hour PM-10 air pollution. Appendix E estimates the 2001 McCarran PM-10 emissions at 297 tons/year and 2006 emissions at 208 tons/year. Two other airports are also listed. There is no justification for any of the data starting with the 297 tons/year at McCarran or the substantial decrease in 2006. The airports in the nonattainment area are significant sources of PM-10 air pollution from aircraft engines, ground support equipment, vehicular traffic to and from the airport, and almost continual construction. The example is typical of the lack of credibility of the Plan's data. There is no credible justification for the entry point data or any of the assumptions that would lead to attainment. This is but one example where the Plan is not complete and for that reason, is legally insufficient.

### EPA concerns

First we will address the EPA concerns expressed in its January 5, 2001 *Finding of Failure to Submit a Required State Implementation Plan for Particulate Matter, Nevada-Clark County*, 66 FR 1046-1050 at 1048.

3 **(1) The underlying data (including whether or not all emission sources are included) which ultimately must result in an accurate emissions inventory.**

### A legally insufficient monitoring network

The NEC has observed irregularities in the monitoring schemes of the APCD. According to 40 CFR §58, Appendix D: "The network of stations that comprise the State/Local Air Monitoring System (SLAMS) should be designed to meet a minimum of six basic monitoring objectives. These basic monitoring objectives are:

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<sup>11</sup> Prepared by Landrum & Brown, 6151 West Century Blvd., Los Angeles, California, 310-342-7400.

1. To determine highest concentrations expected to occur in the area covered by the network.
2. To determine representative concentrations in areas of high population density.
3. To determine the impact on ambient pollution levels of significant sources or source categories.
4. To determine general background concentration levels.
5. To determine the extent of regional pollutant transport among populated areas; and in support of secondary standards.
6. To determine the welfare-related impacts in more rural and remote areas such as visibility impairment and effects on vegetation.

The Clark County National Air Monitoring System/State/Local Air Monitoring System (NAMS/SLAMS) monitoring network fails to meet the six basic objectives as established by federal regulations. The network does not determine the highest expected concentrations of a pollutant. This designed failure is accomplished by the AQD a number of ways. AQD has manipulated the heights of monitoring equipment, site locations, calibration schedules, maintenance schedules, data and reporting, in order to reduce the risk that they will not achieve attainment.

CCHD has avoided reporting real exceedances of the NAAQS by locating monitors upwind of expected high impact areas, according to prevailing wind conditions. Another method CCHD utilizes to under report pollutant concentrations is to carefully watch the monitoring data from telemetered measurements. At times when an exceedance appeared imminent, CCHD has been known to take a site monitor out of service for maintenance, calibration or some other reason. Negative values have appeared in the records. That could mean that AQD "calibrates" the monitor to read lower than actual data points, giving the appearance of being within EPA limits.

Clark County has permitted air pollution sources in industrial areas of the county that have no NAAQS designations. Some of these areas are labeled "unclassified" while other areas are claimed to be attainment areas. By manipulating area designations, Clark County has evaded the language, spirit and intent of the CAA in order to avoid air pollution controls on new industry. By avoiding air pollution controls, politically favored land speculators are able to attract an element of industry that is interested in as little air pollution control as possible.

The APEX and Moapa Valleys (airsheds within Clark County) are claimed to be attainment areas. That is what the public and the EPA are told. Clark County is supposed to conduct its permitting process based upon the attainment status for all criteria pollutants. The reality is that Clark County conceals the truth regarding ambient air concentrations.

As one example, a monitor in the APEX Valley in 1995 recorded 11 exceedances of the 24 hour NAAQS for PM-10 within a thirty-nine day period. Clark County simply ignored the data. More recently, when exceedances are imminent, instruments are shut down. With no instrument, there is no exceedance. This concept of monitoring is conducted under the guise of calibration and routine maintenance. Regular maintenance schedules are not made public beforehand. The purpose of any maintenance event connected with any specific Clark County monitoring event is closely held by those who make the decisions. Those who supervise the monitoring section but are not actually involved in the daily operation, have no idea what is going on in that section.

Evidence of the practices noted above may be found in the applications for new power plants in the APEX valley. Applicants are required to conduct modeling. The applications admit that CCHD monitoring data is missing for periods of time. Numbers were simply substituted for the missing data. The missing data represents those periods of time when an exceedance may well have been recorded if CCHD had not gone into a timely (for sources of air pollution), preventative, calibration and maintenance mode.

The monitoring deficiency affects the pre-construction monitoring program. APEX permits are based on false data that result in relaxed Prevention of Significant Deterioration (PSD) requirements. The AQD joke is that these areas are known as Promotion of Significant Deterioration areas. CCHD knows that these practices are an easy way to reach attainment. There has not been any change in the attitude or personnel involved in AQI monitoring regardless of changes elsewhere in AQD.

In the meantime, APEX air pollution flows downhill, down I-15 during calm mornings, into the lowest areas in the valley. The lowest areas are North Las Vegas, the City of Las Vegas, the Las Vegas strip and on to Henderson. When the wind shifts, the air pollution swirls around the valley and when winds pick up and come from the South, the air pollution pollutes the lungs of the American Indian tribe at Moapa. The air pollution then goes on to pollute the Grand Canyon and Zion National Parks. That is not Clark County's problem.

### **Overall lack of periodic monitoring**

A basic tenet of Clean Air Compliance involves permit development. That is especially true for so-called "synthetic minor" sources. Permits must require sufficient monitoring and record keeping to provide a reasonable assurance that the permitted facility is in compliance with lawful requirements. Unfortunately, sufficient periodic monitoring is absent from most AQD draft permits.

In situations where the applicable requirement fails to mention a particular type of periodic monitoring, periodic monitoring is missing from the draft permit altogether. AQD Technical Support Documents (TSDs) routinely fail to note that an initial source test was not complete as of the date of public notice submittal. When a draft permit mentions a particular limitation that applies to the facility, AQD proposed permits do not routinely include a description of exactly how the facility is required to monitor compliance. When monitoring is required, AQD draft permits routinely fail to mention additional record keeping or reporting

requirements. AQD draft permits are often vague about permit requirements for particular types of information that must be submitted to AQD.

The requirement for periodic monitoring is rooted in CAA §504, which requires that permits contain "conditions as are necessary to assure compliance." When sources attempt to gain a "synthetic minor" permit in order to avoid a part 70 permit, proof of the source's non-major status must assure compliance. Permits proposed by the AQD routinely fail to require credible, replicable and quantifiable evidence of required monitoring that would help assure the public and the EPA that the source is non-major. Since there is no evidence that a particular source is actually a "synthetic minor" source as of the date of an application or as of the date of a public notice, proposed permits that do not include monitoring are legally insufficient. More important, these decisions are made without public oversight.

40 CFR Part 70 adds detail to this requirement. 40 CFR §70.6 requires "monitoring sufficient to yield reliable data from the relevant time periods that are representative of the source's compliance." The regulation also requires all Part 70 permits to contain "testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit." "EPA's Periodic Monitoring Guidance dated September 15, 1998 ("PMG") explains that [i]t has been and continues to be the Agency's view that sources are under an obligation to comply with permit limits., at all times."

Furthermore, EPA provides that periodic monitoring is required when the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. When an applicable requirement imposes a one-time testing requirement, periodic monitoring is not satisfied, and additional monitoring must be required consistent with sections 70.6(a)(3) or 71.6(a)(3). In addition, additional periodic monitoring may be necessary in cases where some monitoring exists in the applicable requirement, but such monitoring does not provide the necessary assurance of compliance. Further, if an applicable requirement lacks monitoring or testing, periodic monitoring is not satisfied unless the unit is an insignificant emissions unit (IEU) for which no additional monitoring may be necessary. PMG at 6-7.

AQD does not routinely enforce its permit requirements. This lack of adequate periodic monitoring is a substantive and significant issue that should result in denial of the proposed permits or the imposition of significant conditions thereon. 40 CFR Part 70 requires periodic monitoring sufficient to demonstrate compliance with permit requirements.

The Clark County District Board of Health and the EPA have failed to review AQD's regulatory performance according to the oversight warnings contained in the USEPA's Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs, Office of the Inspector General Report, E1GAE7-03-0045-8100244, September 25, 1998. Therefore, AQD must deny all such permits or hold an adjudication public hearing on this issue. Clark County does not deny or hold an adjudication hearing on the permits. That is sufficient reason to find that this Plan submission is not complete and should not be approved.

## Monitoring network

4 Section 110(a)(2)(C) of the 1990 Clean Air Act Amendments (CAAA) requires ambient air quality monitoring for the purposes of State Implementation Plan (SIP) development. There is no provision in the Plan for a monitoring network that meets the statutory requirements of CAA § 110(a)(2)(B)(i).<sup>12</sup> To the contrary, where the Plan should be discussing a Las Vegas Valley monitoring network, the May 2001 draft Plan introduces a Bureau of Land Management (BLM) disposal boundary area "where almost 100 percent of the residents within the nonattainment areas reside." Where the Plan should discuss the Las Vegas Valley nonattainment area or Hydrographic Area 212, it fails to do so.

5 The discussion about the Bureau of Land Management ("BLM") disposal boundary area is replete with general, misleading, conclusory statements. The purpose of a PM-10 Plan submission is to comply with the law as it is currently written. The Plan deliberately does not do that. The discussion of a change of the boundary of the nonattainment area was not noticed to the public and is a separate issue not on point to a SIP submission. The boundaries of the Las Vegas Valley nonattainment area (Hydrographic Area 212) are codified at 40 CFR 81.329 and no one has the authority to change the boundary without a full public notice, comment and hearing process separate from the PM-10 Plan submission.

6 There is no credible support in the Plan for any change in the Hydrographic area boundary. The information provided fails to provide valley dust pattern information involving both areas. Substantial, credible information must be provided to show that Clark County is not making another attempt to reach attainment by changing the rules using data that cannot be replicated and a thoroughly misleading discussion.

7 The discussion fails to present a full disclosure discussion concerning past, current and proposed BLM land disposal policies. The Plan fails to note recent Congressional press releases involving more than disposal area boundary changes. Those have relied on maps showing public lands as not available for private development have learned just how quickly Congress and the BLM change disposal boundaries. When it comes to BLM land disposal boundaries, nothing is permanent.

8 It is also true that off-road vehicles and other desert encroachments are resulting in the destruction of desert crust and the release of PM-10 in the valley. The discussion on nonattainment area boundaries misrepresents as to the role the full Hydrographic Area 212 plays in valley PM-10 air pollution. The BLM policing of these areas has not been effective. One example is the use of off road vehicles and bikes on BLM land situated beyond privately owned land just to the West of the western beltway. The dust generated from the vehicles and bikes can be seen as the afternoon sun goes down and the amount of dust generated is substantial. This activity goes on every day. The county, the private land owners and the BLM have all refused to do anything about this source of air pollution.

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<sup>12</sup> See May 2001 PM-10 draft, p. 2-1.



10 More important, this is an excellent example of the reason why a federal agency conformity determination is so important. If the county and the BLM had coordinated regarding conformity issues, Clark County would have had information of air pollution problems in precisely the areas it is attempting to exclude by changing the rules. Some of the dust kicked up by off road vehicles to the West of the western beltway is coming from BLM land. That land is higher than the homes and schools that suffer from this source of air pollution. None of this data is in the PM-10 Plan. Without the BLM's conformity determination, the Plan is not complete. 11 The information from the missing conformity determination is missing from the Plan. The Plan is legally insufficient for any lawful purpose.

We do not believe that Clark County would have submitted the BLM disposal plan information without encouragement from the EPA. We request that the EPA make a full disclosure of its involvement in this particular issue at the earliest possible moment.

### Specific statutory allegations regarding Clark County's enforcement

- A failure to implement enforceable emission limitations pursuant to §110(a)(2)(A) and §172(c)(1) and (5).
- A failure to perform adequate and appropriate monitoring pursuant to §110(a)(2)(B) and §172(2).
- A failure of enforcement pursuant to §110(a)(2)(C).
- 12 • A failure to recruit, retain and manage adequate, qualified personnel pursuant to §110(a)(2)(E).
- A failure to establish and maintain a credible emissions inventory including monitored emissions, and potential emissions pursuant to §110(a)(2)(F), §172(c)(3), and (4).
- A failure to implement applicable stationary source requirements for nonattainment areas pursuant to §110(a)(2)(I).
- A failure to provide credible, believable air quality modeling and data pursuant to §110(a)(2)(K).

The petitioner alleges the following acts or omissions of Clark County regarding the Plan and a corresponding pattern of evasion of the following additional Code of Federal Regulations excerpts.

- 13 • 40 CFR § 51.112(a). The demonstration of adequacy in the Plan including the measures, rules and regulations contained in it, are not adequate to provide for the timely attainment and maintenance of the national standard that it implements.

- 14 • 40 CFR § 51.112(a)(1)(2). There is no demonstration in the information provided to the public that the air quality models used, the data bases, and the other requirements specified in Appendix W of this part (Guideline for Air Quality Models) were met. To the extent that an air quality model was inappropriate, there is no demonstration that any case-by-case modification or substitution was made with the written approval of the Administrator. Where a modification or substitution was made (if any), there is no demonstration that the required notice and opportunity for public comment was made under the procedures set forth in §51.102. There is no adequate, plain English disclosure in the Plan that enables the public to determine compliance with applicable demonstration of adequacy laws.<sup>13</sup>
- 15 • 40 CFR § 51.115(c). There is no adequate plain English disclosure in the Plan for the public to determine compliance with Appendix C to Part 58 of this chapter.

**A failure of appropriate monitoring pursuant to §110(a)(2)(B) and CAAA §172(b)(2).**

16 Figure 2-1 in Section 2 of the Plan illustrates the problem with the AQD monitoring network. According to the plan, "24-hour Exceedances are Associated with High Winds". Yet Figure 2-1 shows the monitors are primarily located inside an artificial BLM disposal boundary. All areas of Clark County have high winds, and according to the submittal, would be expected to have exceedances on these windy days. The Plan is inadequate because the monitoring network is not representative of Hydrographic area 212, much less the entire county. The Plan does not address the nonattainment status of outlying areas. Dust originating from outside the BLM Disposal Area is a source of air pollution to Hydrographic Area 212. See the APEX example noted above.

17 At Section 2.4.1.1 "There were 43 exceedance days at these five air quality monitoring sites over the three-year period from January 1, 1997 through December 31, 1999." The County conveniently dropped the 50 exceedances reported in 1996 from the discussion. The same is true for Table 2-2, p. 2-16.

18 There is substantial evidence that the monitors are placed upwind, or far away, from the prevailing wind drainage paths of the largest listed PM-10 sources. One example is CCHD's failure to place a monitor in close proximity and in the immediate proximity of the Lone Mountain Community Pit, sand and gravel sites. These sand and gravel sites are some of the most politically well connected sites in the valley. They remain essentially without monitoring. The closest PM-10 monitors for these sand and gravel sites are miles away or are upwind of the prevailing wind drainage paths of the site.

19 40 CFR Part 58 indicates that monitors should be placed in areas where one would expect to find the highest ambient pollutant concentrations. Clark County does not want to report the

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<sup>13</sup> A checklist table showing PM<sub>10</sub> compliance with each section of the applicable laws would have been helpful to those drafting the Plan and to those who comment under the tight schedule of only ~thirty-days prior notice. The EPA uses this type of checklist for determining the adequacy of the Plan.

violations of the NAAQS near Lone Mountain, nor do they want to report the violations at APEX, an area scheduled for substantially more development that is controlled by the politically well-connected.

20 In most instances, there is no implementation or enforcement of §173 BACT or LAER as required by the only approved SIP, the 1979 SIP as amended in 1981/82/99<sup>14</sup>. The EPA is aware of the sources that have no lawful permits. The EPA is aware of the sources that operate with APCD sham permits. The NEC has served numerous comment and administrative protest documents on the EPA. In some cases, the EPA has filed Notices of Violation (NOVs). In other instances nothing was done. Two major sources of air pollution, Nevada Power's Reid-Gardner Plant at Hidden Valley and the Mohave Generating Station in Laughlin put out so much air pollution including PM-10, that the sources regularly pollute the Las Vegas nonattainment area air in the still of early morning and on days when there is little wind, despite being beyond the 25 mile regulatory limit.

### What others have said about CCHD monitoring

The NEC agrees with the following analysis from the Sierra Club's April 17, 2001 PM-10 SIP comments concerning monitoring, p. 2.

21 First, the network contains no monitoring stations within the nonattainment area that are outside the BLM Disposal Area. Thus, the monitoring network does not characterize the PM-10 problem *at all* with respect to two-thirds of the nonattainment area. Indeed, the entire Plan seems to have been drafted on the unverified assumption that there is no PM-10 problem outside the BLM Disposal Area. This assumption is apparently based on the observation that most of the population – and therefore most of the PM-10 generating activity – occurs within the BLM Disposal boundary. However, the Plan fails to consider the possibility 22 that recreation or other activities outside the BLM Disposal Area boundary may produce unhealthful levels of PM-10, or that PM-10 may be transported across the boundary in concentrations that exceed the NAAQS. Without monitoring, it is impossible to know whether and to what extent either scenario occurs. Hundreds of thousands of people visit the federal land surrounding the Disposal Area every year. They are entitled to the same level of air quality outside the boundaries of the BLM Disposal Area as within.

23 Second, the Plan's commitment to conduct a PM-10 saturation study beginning in 2004 constitutes an acknowledgement that the current monitoring network is inadequate. The Plan states that the focus of the saturation study will be on neighborhood impacts of major sources, particulate concentrations in geographic locations not covered by the current monitoring network, and inter-basin intra-basin transport during high wind events. CCDCP has had more than enough time to assess the adequacy of its network and address these important issues. The 24 Plan will not comply with the Act's monitoring requirements until this work is done. In any event, there is simply no reason to put off this work until 2004; this

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<sup>14</sup> Subject to a pending Ninth Circuit Court of Appeals decision initiated by the Petitioner.

protracted deadline precludes any attempt to address the deficiencies until it is too late.

The Plan is not complete and is deficient for the reasons provided herein above.

**(2) How the use of the locally-implemented paved road offset program may affect attainment and conformity.**

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**The local road and alley paving ERC or local offset credit scam**

On its face, the local offset credit or certificate program looks reasonable. The alleged goal is to reduce PM-10 or dust emissions by dusty dirt roads that are a source of air pollution. In exchange for paving roads that would allegedly not have been paved any other way, the CCHD is very generous in creating credits or certificates that can be used by sources of air pollution to justify their own air pollution on an alleged 2:1 reduction basis.

25 There are several weaknesses in the program. First, if as the EPA says, they already took credit for reducing PM-10 air pollution in their State Implementation Plan (SIP) which they did, then giving credit again through a local offset credit program is double-counting. The SIP does not include calculations for the air pollution created by those who earn or purchase credits to avoid reducing their own air pollution.

Second, there is no real way to quantify the dust coming off any dirt road. There are so many variables estimates are worthless. The process of counting vehicle trips is fraught with risk of wrongdoing since those who can earn from \$100,000 to \$200,000 per mile by paving roads are under pressure to make certain the vehicle count come in above the required minimum numbers.

26 Assuming solely for the sake of argument that all of the constitutional and statutory authority issues are resolved in CCHD's favor, the basis for offsets must be real, quantifiable, permanent and surplus. The basis for offsets must actually exist in order to have legal status. For double counting reason given above, the offsets are not "surplus" according to Federal Emission Trading Policy. As the EPA says in their audit report, there is no assurance that an air quality benefit is actually being achieved.

When pressed, officials of the Health District answer that they are doing the research necessary to quantify the program. At a minimum, that is an admission that all along the programs were never quantified and are nothing more than a misrepresentation.

Third, the CCHD has more recently asked for a certification that the road would not have been paved except for the offset program. Such certifications are ripe for abuse.

Fourth, road paving companies can and do get paid two or three times for the road. They can receive payment by the state, the federal government, the county or by any private business or party. They can then be paid again by a road that generates 125 vehicle trips per day and once again if the road generates 250 vehicle trips per day. The NEC has asked the County for information as to whether road-paving companies also received payments for road paving from the owners of the property.

Fifth, the NEC has evidence that where government roads are involved, the requirement for bidding has been ignored in the local offset credit process.

CCHD has issued local offset "certificates" for road and alley paving credits based on an estimated 34 tons of PM-10 (dust) per mile per year times seven years of road life for roads with an average of 125 daily twenty-four hour trips per vehicle. The dust estimate increases to 68 tons for an average of 250 daily twenty-four hour trips. Over the years these credits cost from \$550 to \$629 per ton when they are purchased from CCHD. Road and alley paving credit certificates are issued to a few companies most of whom but not all, are in the road paving business. At 238 tons of credit (34 tpy X 7 years), the value of the credits is from \$149,702 per mile if the CCHD selling rate is used and \$101,150 if a street value of \$425.00 is used. The "certificates" are worth twice that, or \$202,300 if the road is a 250 per day trip road.

According to a 1993 estimate from John Murdoch, of Clark County of Public Works, the cost for the County for paving a road 24-foot wide with 2 inches of pavement including preparation, some engineering, and hot mix asphalt, was approximately \$95,000. Even with inflation, the price is around \$100,000 at the present time.

The 1990 Clean Air Act, including amendments thereto, does not require cash payments for local offsetting. Such fees are a result of local regulations, not federal regulations. Local programs such as the Emission Reduction Credit (ERC) Offset Registry and its ERC Offset Assessments account (i.e., local offset credit scheme), are not federally enforceable.

There is no justification for providing local offset credits for road or alley paving. Development, construction and the increase in population connected with road paving results in more, not less pollution. The result of these policies is that the EPA has listed the Las Vegas Valley as the 5<sup>th</sup> worst PM-10 air pollution area in the country.

By this scheme and without lawful authority, CCHD sells the right to pollute the valley's air and by analogy, the lungs of valley residents. This is the government regulatory agency the public depends upon to curb air pollution. By selling the right to pollute, the health and welfare of Clark County citizens is callously ignored. Under the guise of regulatory authority, CCHD requires that most polluters purchase Emission Reduction Credits (ERCs) under penalty of a CCHD hearing and fine. The CCHD acts as the judge, jury, private banker, source of waivers, tax collector and dispenser of political favors, all rolled into one.

Those whose lungs are subject to the pollution sanctioned by CCHD have no practical say in the process. As we have noted, Kerr McGee Chemical has an employee on the CCHD Board. Kerr McGee Chemical is the top polluter in the valley according to the Environmental Defense Fund. As of October 18, 1998, Kerr McGee Chemical had the largest combined total environmental releases, as reported to the Toxics Release Inventory and analyzed by the Environmental Defense Fund was 2,129,950 pounds. There are no representatives of the active environmental groups in the valley on the CCHD Board.

According to the Las Vegas Review-Journal article dated December 26, 1997, no one has any idea of how many credits have been "created," bought and sold in Clark County. Incredibly, both the federal and state governments pay CCHD to further CCHD's "payllution" scam.

The Health District claims that the local offset program is stricter than federal offset programs. That statement is a misrepresentation. The "more strict" statement has important legal significance in understanding the scheme. By simply making a statement that offset credits are more strict, CCHD gets away with the propaganda until and unless anyone is willing and able to look at the actual process, not simply the statement. By definition, if local offset programs are not stricter and the requirements are waived or ignored, they are federally unlawful. The truth is they are less strict in the valley for the many reasons given herein.

Even if valid, the local offset credit scheme removes the moral stigma polluters should have. Credits make the ruining of a neighbor's quality of life simply a cost of doing business. To some favored political friends, polluting neighbors is a handsome profit center.

In one memorable instance, a company was required to pave county roads as a part of a restitution settlement after the U.S. Justice Department filed a complaint alleging the company took a \$21 million amount of government aggregate without authorization and without paying for it. The process of converting government aggregate caused substantial air pollution in the valley. The case was later settled. Part of the settlement's "penalty" was an agreement that the company paves \$1.9 million county roads. The settlement also provided the company with access to another \$10 million of government aggregate well below the market price. In the penalty paving process, the company then qualified for local offset paving credits. To the extent that credits were issued, the company reaps a windfall. What wonderful governments! This has to go down in the annals of Nevada jurisprudence as one of the slickest settlements ever. The public interest was ignored in the process.

The most striking aspect of CCHD air pollution enforcement is its requirement that polluters purchase the right to pollute for money. In document after document, the emphasis is on getting the money. There is no emphasis on curbing air pollution. The effect of what they have been doing is simply that of making a market for their political friends by pointing out that local offset credits cost less when purchased from their road-paving friends.

CCHD has always made certain that there is a way out for polluters. If polluters do not pave roads themselves, they can always purchase local offset credits from road paving friends of the County, or directly from CCHD. Either way, the pollution continues and the public picks up the final tab.

CCHD has used local offset credits as a means of evading controls, evading compliance, and avoiding restrictions on major stationary sources of air pollution. CCHD has used offset credits in place of Lowest Achievable Emissions Reduction (LAER). CCHD favors weak 1½% - 2% temporary moisture controls.

At the April 23, 1998, District Board of Health meeting, the Board adopted newly proposed silt content testing and traffic count rules. The new rules cannot be monitored. Both parameters require sampling that has a basis in reality. Silt content data may be adjusted by simply spreading or sweeping up silt. Car counts may be manipulated at will. It is very easy to ignore low or non-existent counts on weekends, holidays or nights when taking short, weekday sample readings. CCHD has issued credits without credible documentation of either traffic counts or silt content.

At one point the CCHD attempted to hold a monthly offset credit certificate bid process in order to make a market in air pollution credits. Letters were drafted that encouraged air pollution sources to participate in the auction process with the statement, "Failure to accomplish the outstanding will result in APCD enforcement action." That was some sales pitch.

In 1997, the CCHD outdid itself with a Boulder City alley "temporary" paving scam. In response to a request from the CCHD, Las Vegas Paving Corp. agreed on July 22, 1997, to do \$218,830 of alley paving plus \$34,776 for alley preparation. On October 20, 1997 the deal was revised to 1,266.2 tons for 5.32 miles of alley paving. The purpose of the deal as stated in the letter was to provide offset credits for the Eldorado Energy power plant. The point in these arrangements is to find a way to pollute by the purchase local offset credits. There is no emphasis on air pollution reduction. Offset credits are the creative answer to bothersome environmental laws. Michael H. Naylor, Director, Air Pollution Control Division, then stated in a November 6, 1997 letter, "It is our understanding that the alleys have a traffic count of over 125 trips per day...." No one certified 125 trips per day. The letter "understanding" was all that was necessary. There is no evidence of a county bid process in the agreement. This attempt to justify paving alleys by claiming they have 125 vehicle trips per day would be hilarious if the result was not so serious.

Las Vegas Paving Corp. then agreed to pave enough Las Vegas Valley streets to earn 1,800 tons of PM-10 offset credits at an agreed upon discounted price of \$245.00 per ton. Las Vegas Paving Corp. agreed to be paid for their services as the local offset credits are sold and transferred. At the then market price of \$300 per credit, the deal was worth \$540,000.

As a result of the above, there is no program in Clark County that enforces the Clean Air Act. In 1998 the EPA paid CCHD \$748,652 for an "air pollution control project." It can be argued the EPA has financed a conspiracy to keep air pollution sources operating unhindered. It can also be argued that the CCHD is making fools of the EPA with the tax money of those whose lungs contain the air pollution that has resulted from the application of the scam. The alternative and remedy for this scam is a federal takeover pursuant to a Federal Implementation Plan (FIP).

### **The tree planting scam**

Clark County also adopted an Urban Forestry in PM-10 Management Area. This program lacks a sound technical or scientific database and misrepresents the intention of the program to the Environmental Protection Agency (EPA) and the citizens of Clark County.

The Health District held a public hearing prior to adopting amendments to the State Implementation Plan authorizing the Urban Forestry in PM-10 Management Area. In a discussion on p. 4 of the Urban Forestry proposal, the Health District made the following statement concerning the proposal where polluters purchase tree planting local offset credits. "It will provide for a permanent credit of 100 lbs./yr. of PM-10 or NOx, for planting 'low VOC' trees meeting Arizona standards. The payment of \$2,000 will correspond to a lifetime, one ton per year credit." Selling anything on a permanent or a lifetime basis is legally and financially dangerous since it binds future governments and future generations. That is an excellent example of friends helping friends.

The basis for local tree planting offset credits is similar to road paving offset credits; both are nothing more than unsubstantiated numbers on a piece of paper. Both programs simply permit polluters to pollute with impunity.

The tree-planting scheme was recently adopted by CCHD. The new regulations assign a permanent emission reduction credit of 100 lbs./year per tree of PM-10 or NOx credit for allegedly reducing 60 lbs./yr. of PM-10, an unknown amount of ozone, 5-10 lbs./yr. of ozone precursors, and 150 to 250 tpy of carbon dioxide (a non-regulated air pollutant), per tree, per year. There is nothing in the data presented that enables anyone to replicate the data from generally accepted sources. The data cannot be quantified.

When all else fails, manipulate the data. Despite the fact that there is no lawful basis for CCHD's data, CCHD has overcome the problem in the usual way by simply ignoring facts with the decree, "Forestry ERCs assigned in this manner shall be considered real, surplus, permanent and quantifiable." The statement misrepresents. There is no authority for the scheme, they just do it.

The authors of the scheme have learned to transfer the responsibility for misrepresentation to others. That is accomplished by presenting data that has no basis in fact to the CCHD Board. Once the Board accepts the responsibility, the legal and moral responsibilities are transferred to the individual members of the Board.

At the time the data for the tree planting scheme was distributed to interested parties, CCHD had data in the form of an actual site study from American Forests indicating that trees do not provide anywhere near the levels of pollution reduction claimed. The American Forest technical data based on 193 trees, indicate that 193 trees would remove 69.2 lbs. of PM-10 per year. Thus the data is in error according to American Forests, by a factor of almost 193. The data is in error even more if the allowed permanent credit of 100 lbs./yr. is considered. It appears that CCHD has seriously exaggerated the benefits of trees in reducing PM-10 pollution. There is also some black humor in attempting to quantify the reduction of PM-10 from twigs in a five gallon can whose leaves fall off during the winter.

Available scientific data suggest that it takes almost 200 fully grown trees to remove about 215 lbs./yr. of carbon dioxide pollution. This alleged benefit is dwarfed by the million tons per year the recently permitted Eldorado Energy Power Plant will emit. That is the reason the tree planting scam.

Re: Clark County Air Pollution Control Regulations, §12.4.5.4(a). The stated purpose of the plan is allegedly that of reducing airborne PM-10 pollution in Boulder City and the Eldorado Valley. The PSI readings for Boulder City are now relatively good compared to Las Vegas. If the tree planting program could be quantified (which it cannot), it would appear to make sense to first try the scheme in Las Vegas where PM-10 is a nonattainment problem, before Boulder City. An error could be costly to the residents of Boulder City.

The tree-planting scheme flies directly in the face of the Southern Nevada Water Authority's (SNWA) program to convert to desert landscaping as a means of saving water. Trees require water. At the same time the SNWA is asking citizens to refrain from too much planting,



CCHD is recommending water rich tree planting. Commissioner Kincaid is apparently supporting desert landscaping through her position with the Southern Nevada Water Authority. She has taken an inconsistent position by supporting the tree-planting scam. She has certainly not moved to stop the tree-planting scam. No one has come up with an explanation of what happens if one of the "permanent" trees dies after offset credits are authorized. The Los Angeles basin is full of trees, yet it remains a nonattainment area for PM-10, ozone, CO and NOx.

The tree planting proposal is designed to create a well-financed political dynasty for the well connected. The scheme gives politicians the power to arrange for a favored nursery to plant trees. That adds up to more political power in the hands of those who promoted the scheme. This is another McCarran Airport concession scheme

CCHD cannot account for road paving offset credits. That suggests that tree-planting credits will also become a huge political honey pot.

27 Any Plan that supports the issuance of local ERC credits make the Plan incomplete for any legally sufficient purpose. ERC credits misrepresent. That is a polite word for fraud.

**(3) The plan's treatment of mobile source emissions growth.**

In Las Vegas, Nevada, the 1997 Serious Plan did not establish any PM-10 emission budgets for the annual or 24 hour PM-10 standard. Thus the 1997 plan did not contain emission budgets that are adequate for use in conformity determinations. In a letter dated July 12, 1999, from EPA to the Nevada Division of Environmental Protection, Region IX determined that the area's budgets were inadequate and the EPA published that finding on November 1, 1999. 64 FR 58837.

28 The May 2001 serious nonattainment area SIP states (E-1), "The nonattainment area inventories were not projected for future years because the attainment demonstration is based on the BLM disposal area, not the nonattainment area." Apparently Nevada has decided that it will use its own approach to attainment that ignores the Clean Air Act and EPA regulations. That admission makes the Plan incomplete. No statutory justification was given for developing a serious nonattainment plan without using only the Hydrographic Area 212 throughout the Plan, the legally sufficient nonattainment area.

29 **(5) The plan's inaccurate determination that BACT application is unnecessary at sources which are clearly subject to such federal requirements.**

Sections 172(c)(1) and 189(a)(1)(C) read together require that moderate area PM-10 SIPs include RACM and RACT for existing major sources of PM-10. These SIPs were to provide for implementation of RACM/RACT no later than December 10, 1993. Since the moderate area deadline for the implementation of RACM/RACT had passed, EPA concluded that the RACM/RACT required in the State's moderate plan must be implemented as soon as possible. *Delaney v. EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be "as soon as practicable" without citations to statutes. 63 FR 15920, 15926 (Apr. 1, 1998).

The methodology for determining RACM/RACT is described in detail in the General Preamble. 57 FR at 13540-13541. The EPA suggested that Nevada start by defining RACM with the list of available control measures for fugitive dust, residential wood combustion, and prescribed burning contained in Appendices C1, C2, and C3 of the General Preamble, and adding to this list any additional control measures proposed and documented in public comments. The EPA's indicated that the state could then cull from the list any measures for insignificant emission sources of PM-10 and any measures that are unreasonable for technological or economic reasons.

The General Preamble does not define insignificant except to say that it would be unreasonable to apply controls to sources that are negligible ("de minimis") contributors to ambient concentrations. However in its serious area plan guidance, EPA does establish a presumption, for use in BACM determinations that a "significant" source category is one that contributes 1  $\mu\text{g}/\text{m}^3$  or more of PM-10 to a location of annual violation and 5  $\mu\text{g}/\text{m}^3$  to a location of 24-hour violation. Addendum at 42011. EPA has also used this same definition to define significant in determining which source categories require the application of RACM. See 63 FR 41326, 41331 (Aug. 3, 1998). However, whether the significance threshold should be lower in any particular area depends upon the specific facts of that area's nonattainment problem. For any RACM that are rejected by the state, the plan must provide a reasoned justification for the rejection. Once the final list of RACM is defined, each RACM must be converted into a legally enforceable vehicle such as a rule, permit, or other enforceable document. General Preamble at 13541.

Under section 189(b)(2), for moderate areas that have been reclassified as serious, the state must submit BACM 18 months after reclassification, i.e., August 8, 1994 for the Las Vegas Valley area, and must implement those measures four years after reclassification, i.e., by February 8, 1997. As with the RACM/RACT implementation deadline, the BACM/BACT deadline has passed. Therefore BACM/BACT must now be implemented as soon as practicable.<sup>15</sup>

BACM is defined as the "maximum degree of emission reduction of PM-10 and PM-10 precursors from a [significant] source [category] which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such sources through application of production processes and available methods, systems, and techniques ...." Addendum at 42010. BACM/BACT must be determined and documented consistent with the Addendum (59 FR at 42012-14) and must be applied, at a minimum, to each significant source or source category. Addendum at 42010.

The state must document its selection of BACM by showing what control measures applicable to each significant source category were considered. See Addendum at 42014.

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<sup>15</sup> As soon as possible does not necessarily translate into as soon as practicable. Clark County's definition of as soon as practicable is simply that the requirements will never be practicable. With a jurisdiction whose political aspiration is runaway growth, the interpretation is quite logical. It is impractical to stop evading the Clean Air Act where there is so much land speculation at stake. That is not the way to cleaner air attainment.

BACM should go beyond existing RACM controls and can include expanded use of RACM controls (e.g., paving more miles of unpaved roads). Addendum at 42013. Additionally, BACM should emphasize prevention of PM-10 emissions over remediation where possible. Addendum at 42013. The stringency of BACM may differ among serious PM-10 nonattainment areas depending on the contribution of sources to the PM-10 emissions inventory and other local factors. According to EPA's BACM guidance for serious PM-10 nonattainment areas, the word "best" implies that there should be a greater emphasis on the merits of the measure or technology alone and less flexibility in considering other factors. Addendum at 42011.

The Plan's answers to the RACM/RACT implementation deadline, and the BACM/BACT deadline is to do nothing and ask for more time. Another creative approach is that of changing the nonattainment area boundary. If RACM/RACT implementation deadlines were not complied with by the deadlines, Plan is incomplete and must be rejected as incomplete.

The EPA must also consider the record of any jurisdiction that misses as many deadlines as Nevada has missed. For all practical purposes, Clark County has never met a statutory deadline. Clark County never intended to meet any statutory deadline. Promises on paper that have proven to be meaningless ever since the adoption of the Clean Air Act in 1970, are not likely to result in attainment in the 31<sup>st</sup> year. There is a message in Clark County's track record that the EPA always seems to miss.

#### Stationary sources

30 The Las Vegas Valley is a serious nonattainment area and that area has several significant sources of PM-10. Significant PM-10 sources have regularly appeared in AQD inventories indicating source annual emissions of PM-10 that exceed 100 tons each. The Plan identifies few major sources, out of several, that have over 100 tons of PM-10 per year. This under reporting is a misrepresentation of PM-10 emissions in the nonattainment area. The under-reporting was accomplished partly by AQD's issuance of "synthetic minor" permits.

31 The Plan is missing potential emissions data. It is a common AQD practice to write permits with huge Potential to Emit (PTE) limits and then let the source claim much smaller  
32 actual emissions as a means of avoiding fees. The more important number is the Potential to Emit number since that number is more representative of actual emissions as opposed to fee paid  
33 emissions. AQD has written ERCs' for stationary source shutdowns that far exceed the sources reported actual emissions. In the process, AQD has allowed major sources to evade the federal offsetting emission reduction requirements. By evading this important requirement, the County has failed to show "reasonable further progress" for thirty years. Reasonable further progress requirements are basic to any approvable SIP, but are ignored in this submittal. CAA § 172(c)(2).

34 The amount of emission reductions claimed in the Plan do not reduce the actual emissions below the 1996 year emissions. There were 50 exceedances reported by the CCHD in 1996 alone.

35 Another serious omission involves the use of an old 1998 emissions inventory. A 1998 emissions inventory does not include sources of air pollution modified, constructed or planned since 1998. One such substantial source of air pollution is El Dorado Energy, a major source of PM-10 air pollution within the 25 mile nonattainment area limit. There are a number of projects planned for the APEX and other nearby areas that are not in the emissions budget. Some of the missing projects include but are not limited to a 580 MW Southern Electric power plan, a 1100  
36 MW Duke Energy power plant, a Nevada Power Harry Allen Station addition of several more units to their existing one unit, and a Las Vegas cogeneration power plant in North Las Vegas. Las Vegas cogeneration already has received approval for four more units in addition to the one they already have. The Plan does not include these data.

37 It is important to note that none of Clark County's PM-10 emissions inventories have ever been approved. With the withdrawal of all PM-10 SIP plans going back to 1990, there is no evidence that any data from any year is legally sufficient to sustain this or any other PM-10 SIP. The base year data must be credible and quantifiable. That will be difficult since none of Clark County's PM-10 emissions inventories has ever survived public scrutiny.

38 We estimate that the air pollution from all such projects (listed and not listed), goes well beyond the approximately 2,000 tons per year of PM-10 that the plan suggests. The Eldorado Energy plant was the recipient of bogus tree planting credits (the twig in a can that sleeps during the winter scam)<sup>16</sup>. Nothing is as it seems in Clark County. The EPA should not accept the Plan data without an inventory of all of the air pollution sources in the valley along with the Potential to Emit data for each source.<sup>17</sup>

39 The Clean Air Act does not support the issuance of a SIP to a jurisdiction that picks and chooses the sources it wants to include or leave out of the Plan. The CAA does not support the inclusion of misleading data in a Plan in order to give the public and the EPA a false impression of a source's actual air pollution. The data reported in the Plan are data that came from a discredited AQD administration. There is no data in the Plan that are free the prior administration's contamination. The prior administration's creative data are not real.

40 The CAA requires that all nonattainment areas prepare a base year inventory that is comprehensive, accurate, and current with respect to actual emissions. This comment makes it clear that the 1998 inventory was not comprehensive, accurate, and current with respect to actual emissions. Since the 1998 inventory is not credible, a 2006 inventory extrapolated from the 1998 inventory is not comprehensive, accurate, and current with respect to actual emissions. We have also pointed out that the point source inventory data are not accurate for the reasons given herein. Consequently, any attempt to claim that reasonable further progress can be made in Clark County is based on false data. The plan is an attempt to grossly inflate the PM-10 data in order to show on paper only, a reduction to the existing levels. Unfortunately, the existing levels resulted in 50 exceedances in 1996 alone, and the emissions have gone up since then. Clark County must reduce the actual emissions to levels far below those in 1996. Clark County's

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<sup>16</sup> See the NEC Report on Clark County's District Board of Health, Revision V, dated December 9, 1999, [www.necnev.org](http://www.necnev.org).

<sup>17</sup> The NEC can help develop a more thorough inventory with more time.

political plans are diametrically opposed to the data in the Plan and for that reason, the Plan is a knowing, willful misrepresentation not only against the EPA, but against its own people.

- 41 There is no explanation as to how the data was extrapolated to show attainment in 2006. The Plan is sheer magic and puffery. There is no clear and unambiguous statement advising the EPA or the public of the original derivation of the data, or the formula used to adjust or manipulate the data from year to year from their inception.

- 42 The few stationary point sources that are identified are listed with PM-10 emissions inventories that are not credible. The Plan lists source emissions that decreased since the 1997 inventory at a time when the population in the valley was growing rapidly. There is no information as to what equipment was installed or when it was installed. There are references that LAER and BACT will be required, but there is no information as to how the sources will comply with LAER or BACT. The EPA must require that the Plan list specific requirements (such as baghouses, paved haul roads, etc.) that must be complied with at each stationary source in order to comply with BACT/LAER. In coordination with Clark County, the EPA did not request this information for all sources. With no request from the EPA, Clark County keeps on misrepresenting compliance.

There is no list that contains a full disclosure of the number of times AQD required and actually saw implemented either LAER or Notices of Violation (NOV) since 1990. A list of actual LAER and NOV enforcement would go a long way toward improving AQD's credibility image. There is no such list. There was no such enforcement effort. Actually enforcing the law was never an AQD goal.

- 43 Noticeably absent from the Plan are listings for major utility sources. These large sources of PM-10 are often forced to operate at or near full capacity in order to meet the electrical demands of the growing Las Vegas marketplace. Despite this robust and booming electrical demand, AQD emission inventories PM-10 fail to include the corresponding emissions. Emissions from Nevada Power large fossil fuel fired combustion units are almost non-existent. None of these emissions data are in the Plan. The Plan's list of sources is not complete or credible.

According to §110(a)(2)(F)(iii), "the Plan must have correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection."

- 44 The Nevada Environmental Coalition, and others including the press, have tried for years to get accurate, up-to-date emissions inventory and their correlations to statutory and permitted emission limits from the AQD. The AQD has not provided and cannot provide a credible, accurate, up-to-date emissions inventory along with the correlated emissions limits. The AQD admits its inventory is in disarray. The CCHD resists providing public information by charging as much as possible for the information that is available. In the meantime, AQD helps major sources evade the requirement to apply for a part 70 permit by claiming the source is non-major. They even have a new evasion language. The new term is "synthetic" minor.

Petitioner has made it clear that he can prove that AQD does not comply with federal inventory regulations. The reason that the AQD cannot provide a credible emissions inventory is that they have made up numbers for so long they are tripping over their own data and can no longer creatively adjust the numbers without public oversight organizations catching on. They are in a maze of their own making.

According to CAA §172(c)(3), "Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area...."

45 The 1997 inventory is the APCD inventory where their goal was "10% perfection" or accuracy (90% imperfection or inaccuracy). An inventory that seeks 10% accuracy is not credible, comprehensive, or current. It is also not real. The 1998 inventory the Plan relies upon cannot claim 10% accuracy. AQD cannot substantiate any of their numbers with credible data that would hold up in a court of law. AQD is certainly heading for an opportunity to try. They may well take a far too patient EPA with them.

46 The methodology for using a "proportional Roll-Back" model is not provided. Data from the CO SIP submittal indicated that a "roll-back" model was not an appropriate or accurate tool. An invalid model, combined with invalid monitoring and emission inventories is all the Plan uses to promote continued growth at all costs.

It is well known that Clark County has established temporary test sites over the years and knows the areas where PM-10 monitoring results in the highest readings. A full disclosure concerning that information was not provided to the public or to the EPA.

47 Designations of computer models provided to the public are vague and ambiguous. Clear references as to where the public might find the computer models used in order to determine the emissions budget are missing. The use of particular models and particular versions of models used is not justified with the information provided.

48 Choosing only a small area of the Las Vegas Valley showing a decline in selected emissions, is not representative of the valley nonattainment area according to the SIP's own population and VMT (vehicle miles traveled) data. More important, from a common sense point of view, the emissions data report is absurd. Clark County takes the position in this report that it may more than double the population and VMT in the valley and decrease PM-10 concentrations along the way. The only way that could happen is to close down all forms of transportation, block all interstate highways and then require the public to ride bicycles. At the current rate of growth, they may have to include a smoking ban and curtail all other activities that create PM-10 as well.

49 The truth is that Clark County has to slow down its issuance of building and dust control permits. Clark County has to slow down its runaway growth policy or it will never meet PM-10 standards or any other air pollution standard. Clark County refuses to face the obvious and for that reason alone, the EPA should not approve this PM-10 SIP. Clark County would rather give

up every federal dollar than slow down growth. The State of Nevada is slowly waking up to the obvious and is in the early stages of panic since Clark County is in charge, not the state.

50 **(6) An overall strategy to attain which inappropriately assumes future construction occurring on all vacant land within the nonattainment area.<sup>18</sup>**

Nevada can reach attainment in Clark County by cutting back on the number of building and dust control permits it is issuing. There is no political will to do that and the only way there will be attainment is the way one key AQD executive handled the situation. That executive said there would be no more exceedances and the message was understood throughout AQD. The executive's hand picked personnel are still there and they control the monitoring. Those who have the titles and the responsibility to run AQD do not run it. AQD is still being run by an unseen hand from outside. The current insiders do not control any part of AQD, they just do not realize that yet.

**(7) Failure to integrate the conformity budget into the plan so that the budget and the plan can be shown to be working together towards attainment.**

51 Re: 40 CFR 93.105 and § 93.105(e). The Plan lacks evidence that it was developed through consultation with the federal agencies operating in the Las Vegas Valley. These agencies include but are not limited to the Department of Interior's Bureau of Land Management (BLM), the Department of Transportation's Federal Highway Administration (FHWA) and the Federal Aviation Administration (FAA).

52 Federal agencies are required by law to do conformity determinations effective on the date(s) Hydrographic Basin 212 (the Las Vegas Valley) was subject to a finding of serious nonattainment. In this instance, that would be the date the area was designated a serious nonattainment area for Particulate Matter (PM-10). There is no evidence of federal agency-by-agency conformity determinations in the draft SIP submittal. There is no evidence that federal agencies have ever determined their total Particulate Matter emissions from their valley, nonattainment area activities. CAA § 176(c).

53 Nevada has a 1979 SIP. The 1979 SIP does not conform to the 1990 Clean Air Act Amendments (CAA). There are no 1979 SIP PM-10 emissions budgets. Federal agencies are required by the CAA to total all of their valley activity air pollution from ongoing projects from the date the valley was designated as a PM-10 nonattainment area. Thereafter, they are required to amend the conformity determination as projects with more than de minimis PM-10 air pollution are added. See the CAA §§ 176(c), 40 CFR § 51.850, *et seq.* and 40 CFR § 93.150, *et seq.* and 69 FR 18911-18918, April 10, 2000, Transportation conformity Amendment: Deletion of Grace Period, Final Rule at 18912-18913. See also *Sierra Club v. EPA, et al.*, 129 F.3d 137 (D.C. Cir. 1997).

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<sup>18</sup> EPA noted that this was consistent with concerns that the Sierra Club raised both in its comment letter on the June 14, 2000 proposed disapproval action, and in its October 30, 2000 notice of intent to sue EPA.

The purpose of conformity determinations is to determine the total emissions data available to the local and state agencies responsible for SIP, emissions budget and conformity compliance. Conformity determinations are an important link to any SIP process. That information is missing from the Plan. Clark County has long preferred to operate in a regulatory vacuum because it was easier to control if no one knew what was going on. The last thing Clark County wanted to see was accurate air pollution emissions totals. Neglecting to total air pollution emissions data has served land speculators and the construction industry well for more than thirty years. This is one of the means that Clark County used to hide that air pollution truth from the public and the EPA. Clark County is now caught in a web of its own making. The EPA is now caught in that web by not having the good sense to require conformity determinations from the outset. This large, conformity, emissions data gap renders the Plan legally insufficient for any lawful purpose.

Federal agencies operating in the Las Vegas valley have completed several "little-piece," valley, federal agency environmental assessments (EAs). "Little piece" EAs report PM-10 and other air pollution on an EA by EA, project by project basis. The totals from these "little piece" EAs are never totaled, they don't dare. The totals from all valley EAs are not a part of any federal agency conformity determination and they are not included in the Plan's emissions inventories.

The facts of this issue provide evidence that Clark County has not been consulting and coordinating with federal agencies that are operating in the Las Vegas Valley. There is no evidence in the Plan that Clark County received, and anyone actually read all of the federal agency data that is available, in any coordination process. There is a lack of evidence in the Plan, of conformity data from the FHWA, BLM, FAA or any other federal agency that operates within the Valley. The reason for conformity determinations (which are years past due) is to provide local agencies with exactly the information the county is now missing. Clark County needs these data in order to prepare a legally sufficient draft SIP proposal.

The County made a serious error in failing or refusing to coordinate and regulate federal agency air pollution emissions. The County's failure is cause to facially reject the instant PM-10 SIP submission out of hand as incomplete.

**(8) Failure to address significant elements necessary to justify an extension of time to achieve attainment of PM-10 standards.**

All extensions of time have already expired. In accordance with section 189(b)(2) of the CAA, Nevada was required to submit a SIP revision to the 1979 SIP by August 8, 1994 assuring the implementation of BACM by February 8, 1997, and a new attainment demonstration by February 8, 1997.

54 When the State of Nevada officially withdrew from submissions of all previous plans and  
addenda that did not demonstrate attainment of the NAAQS, the EPA erred in not also revealing  
55 that Nevada had long since run out of legally sufficient extensions of time. Nevada has a lawful  
Nevada SIP. That SIP is the 1979 SIP as amended in 1981, 1982 and 1999. Despite having a  
SIP with 1979 emissions limits and virtually no legal "wobble room," the EPA and Nevada have



allowed AQD to champion runaway growth that is incompatible with prevention of serious deterioration ("PSD") or cleaner air attainment.

Clark County managed to reach serious nonattainment for carbon monoxide ("CO") and particle matter 10 microns or less ("PM-10") despite having a 1979 SIP that would have prevented nonattainment if it had been enforced. The 1999 amendments are subject to a timely appeal in the Ninth Circuit Court of Appeals that is now pending.

The EPA, Nevada and Clark County have all failed or refused to include the fact that there is a valid Nevada SIP and they have simply ignored the strict requirements of that SIP for twenty-one years. There is no authority from that SIP to authorize any of the Las Vegas Valley's current air pollution emissions much less emissions that would exceed the NAAQS. Instead of a SIP approval, the discussion should first center on sanctions and a federal implementation plan ("FIP"), now not later.

56 At the same time, neither the EPA, Nevada or Clark County has taken any action to coordinate with federal agencies operating in the Las Vegas Valley for the purpose of obtaining initial federal agency conformity determinations. See CAA § 176(c). All of the agencies named on the first page of this document have cooperated over the years to evade the language, spirit and intent of the Clean Air Act.

**A failure of implementation of applicable stationary source requirements for nonattainment areas pursuant to §110(a)(2)(I).**

57 The County and the Plan have long ignored the true role of stationary sources in the nonattainment area. The reason is simple. The sources are politically well connected and the County wants to protect the wealth that is created from the development industry. The controls required by New Source Review (NSR) or New Source Performance Standards (NSPS) have not been implemented as we have discussed previously. So called grand fathered sources are required to implement BACT/BACM/LAER, but have not. In the interim, the benefits of applying controls are taken on paper. It is the reality and credibility of achieving the BACT paper numbers that is missing. In Clark County, BACT controls are not permanent control measures. Control measures taken at stationary sources such as sand and gravel sources are only temporary controls consisting of the application of moisture. When the moisture dries, 58 particulate matter is free to blow throughout the valley – and it does. Permanent controls such as baghouses with the stabilization of the baghouse fines must be required before clean air attainment is realized in Clark County. CCHD has taken the alternative route, that of manipulating the data.

Our claims are confirmed by the EPA's 1996 Re-evaluation of the Clark County Air Quality Program. Our allegations are supported by EPA's issuance of several notices of violation (NOVs). Our allegations are reinforced by the ENVIRON report which we have cited previously. The Plan cannot be approved without aiding and abetting Clean Air Act evasion.

## A failure of believable air quality modeling and data, §110(a)(2)(K)

59 The SIP submittal indicates that attainment can be reached, if only on paper, in the year 2006. There is no credible emission rate that corresponds with that Plan attainment goal. Percentages and percentage reductions are used in the Plan. There are no credible supporting emission rate data. The truth is that Clark County does not have any idea how it will reach attainment. Earlier SIP submittals were not approved, attainment was not reached, and the prior plans were withdrawn. The data in all of the withdrawn or unapproved plans did not survive public scrutiny. The control measures described in withdrawn plans were never implemented. The proposed control measures in the instant plan have not been implemented. The Plan fails to correlate the data with the previous budgets that have failed to reach attainment. The data supporting the instant Plan cannot be replicated. The data is not credible.

Clark County has had a plan all along that will work. The plan is to simply allow AQD to continue air pollution monitoring. All one has to do is have a very positive attitude along with the power to report whatever emissions data are needed to reach attainment. Whenever there is an imminent exceedance, simply take the monitor off line and call it a "calibration" or a "planned maintenance" event. These are tried and proven CCHD methods of evading the Clean Air Act compliance. Under this scenario, results are guaranteed. APCD's plan is to reach attainment by keeping a careful eye on monitors and take them out of service when an exceedance is imminent. The only way the plan can fail is if the wrong person goes on vacation.

### Statutory review

The EPA has been under pressure from the NEC and others to implement a Federal Implementation Plan (FIP) as required by the CAA. The EPA has resisted that statutory requirement for political and administrative reasons. The EPA has been under heavy political pressure in general to approve the PM-10 SIP submittal. There is a concern that quality, credibility, conformity, and legal sufficient compliance are not major EPA considerations, just speed.

During 1999, a high level delegation from the EPA met with Clark County Health District officials and members of the Las Vegas environmental community. During the meetings, EPA executives heard credible testimony from those who had first-hand knowledge of the facts and allegations, some of which the NEC is repeating herein. Officials of the CCHD's Air Pollution Control Division (APCD) either admitted the allegations or remained silent when allegations were made. The three highest administrators are gone but those they hired are still in important positions. The allegations herein are not new to Clark County or the EPA. The allegations have never been refuted with any credible evidence. Clark County's own auditors have admitted that key documents have gone missing.

Robert W. Hall, NEC's president, offered the Clark County Board of Health copies of some of their own data and documents that were protected from administrative destruction by whistleblowers and others. The Board simply sat in stunned silence. They were not about to accept the offer of their own documents which they happily thought were destroyed.

The NEC has since offered witnesses and documents to back up its allegations. The Nevada Legislature's S.B. 432 subcommittee's contractor ENVIRON begged off when it came to witnesses and evidence on the basis of too little time, no money and no authority to report on more than the broad issues. Local, state and federal official including law enforcement officials who have had anything to do with the Clark County Health District's malfeasance know the allegations are true.

APCD has not implemented or enforced in good faith, its approved State Implementation Plan (SIP) for New Source Review as required by §173 of the CAA. Stationary Source compliance with the emissions control requirement of Lowest Achievable Emission Rate (LAER) as required by §173(a)(2) and the 1979 (as amended) Clark County NSR SIP are routinely evaded by air pollution sources with the full knowledge and assistance of the AQD.

The requirement for federally enforceable offsetting emissions reductions found in §173(a)(1)(A) is ignored. This requirement is evaded by misrepresented and unlawful local road paving and tree planting schemes. The local offset credits are allegedly earned by reducing air pollution. There is no credible evidence that air pollution is reduced beyond *de minimis* amounts by either scheme. To the extent that there is no evidence that air pollution is reduced beyond *de minimis amounts*, the sale of the local credits to those who want to pollute adds to the PM-10 problem in the nonattainment and management areas of Clark County. That does not help attain the NAAQS or reasonable further progress to clean air attainment.

Many examples of regulatory non-compliance exist for which neither EPA or the CCHD has taken enforcement action. Another example is Nevada Power's Clark Station where modifications were implemented without enforcement.

It is well known and documented that CCHD has not taken enforcement action against favored sources unless the EPA initiates a rare Notice of Violation (NOV) action. ENVIRON, the consultant hired by the State of Nevada's SB-432 subcommittee summed it up when they made the following statement (p. 2-112) in their March 2001 Draft Final Report. **"Perhaps the gravest deficiency in the control of air pollutant emissions from stationary sources in Clark County lies in the enforcement of regulations and permit conditions applicable to these emissions from existing facilities."** With the unwillingness of the CCHD to perform the duties that it is paid by the EPA to perform and with subsequent pressure from the NEC and others, the EPA finally stepped in and issued several Notices of Violation to Clark County stationary air pollution sources. They have only scratched the surface of the AQD iceberg

There is another ENVIRON report statement of interest in this SIP proceeding at p. 2-113, "In the majority of these cases, the Health District was either aware of the violations or abetted in their commission by advising facilities to ignore federal requirements." That is not an NEC statement. The statement was published in the Final report by the Nevada Legislature's own consultants and the Legislature accepted the report.

Clark County is relying upon the EPA for extensions of time that discussions with the EPA indicate will be granted. Compliance with the Clean Air Act is not primary consideration

for Clark County of the EPA. Petitioner will work with those whose integrity is intact in order to reach clean air attainment.

### **EPA issues**

In its regulation of Nevada and Clark County, the EPA is violating its non-discretionary duty under CAA § 110(c)(1) to promulgate a Clark County Federal Implementation Plan (FIP) in Clark County for the following reasons.

Nevada has failed to submit either a legally sufficient PM-10 or a CO SIP by the statutory deadlines. The EPA has yet to approve either SIP by its statutory deadline.

EPA has failed to initiate a PM-10 or a CO federal implementation plan (FIP).

There is no timely, valid, approved Nevada SIP that meets the CAA 1990 amendments.

EPA has failed in its non-discretionary duty to timely and promptly notify Nevada that all statutory extensions of time to comply with the 1990 amendments to the Clean Air Act have expired.

EPA has failed in its non-discretionary duty to timely and promptly take the enforcement actions required by the CAA when the EPA granted extensions of time to Nevada to comply no longer have a statutory basis in law.

The EPA has failed in its non-discretionary duty to timely and promptly rescind or withhold all sub-SIP CAA authority granted to Clark County Nevada or its subdivisions until the higher CAA authority (SIPs and conformity determinations) were approved first. The EPA has unlawfully reversed the sequence of the Clean Air Act's mandatory requirements.

The EPA has failed in its non-discretionary duty to timely and promptly stop state and local government executives from seizing and exercising CAA powers they do not have by law.

The EPA has failed in its non-discretionary duty to timely and promptly stop the flow of EPA money to scofflaw Nevada state and local governmental organizations. This applies to governmental organizations whose executives have seized CAA powers they do not have by law or who have misrepresented CAA certifications of compliance to a CAA 1990 amendments SIP that does not exist.

The EPA has failed in its non-discretionary duty to timely and promptly inform, advise and coordinate with other federal agencies regarding their statutory duties pursuant to CAA § 176(c) in situations where there is no CAA 1990 amendments SIP.

### **Hydrographic area 212 vs. Clark County**

We agree with the Sierra Club that a more accurate title for the Plan would be "PM-10 State Implementation Plan for the Las Vegas Valley Nonattainment Area." The Plan is directed to the Las Vegas Valley, Hydrographic Area 212.

### **Legally sufficient authorities are missing**

61 We agree with the Sierra Club's concern about that the Plan is striking in its general lack of citations to authority. Most of the pages in the Plan address important issues without citation to law or implementing regulations. Without specific authority citations, the Plan is an interesting discussion, but it is not a legally sufficient, serious SIP Plan. We support the Sierra Club's request for references to legal authority, including specific page and section numbers, to ensure that the public is given an adequate opportunity to review these requirements and assess the Plan's compliance with them. The public has no reasonable way to follow the authorities supporting the discussion without citations. As long as that information remains legally insufficient, the Plan cannot be held to be complete.

62 On April 17, 2001 Sierra Club filed a *Review of Clark County, Nevada Draft PM-10 State Implementation Plan* prepared by Resource Systems Group, Inc. dated April 2001 (Appendix P). That document provides specific examples of the Plan's serious technical deficiencies. The review provides evidence that the Plan must be subject to a full credibility audit. In the interim, the Plan is incomplete. The NEC adopts the Sierra Club's review and makes it a part hereof for all purposes.

63 The Appendix P summary of Robert Hall's comments misrepresents and is meant to trivialize Hall's 33 page written document. The summary does not fairly represent Hall's comments. The summary also fails to note that Hall was cut off from speaking by the Clark County Commission chair when he spoke on the issue of enforcement in relation to the data and discussion in the Plan. The county commission's chairman made it clear that he did equate enforcement with the Plan. Clark County may not claim that it has fulfilled its public involvement responsibilities when the county's own chairman refuses to allow the public to discuss enforcement. Without enforcement, everything in the Plan is meaningless. To the extent that the chairman's views reflect the views of the county commission, they provide evidence that the county's commitment to enforcement misrepresent

### **Statutes and regulations vs. guidance documents**

65 We have less enthusiasm for citations to guidance documents than we do for statutes, and then lawfully adopted regulations. A SIP is the most important Clean Air Act document a state can develop. For that reason, the premise of the SIP must first conform to the statutes of the Clean Air Act and where necessary, then conform to the guidance of legally sufficient regulations that do not conflict with the Clean Air Act. Either the appendices must include the authorities cited in their four corners, or the public must be informed where referenced documents may be found on a Web site. The public must have reasonable access to all documents referenced.

The issue of the misuse of guidance documents was the subject of *Appalachian Power Company, v. Environmental Protection Agency*, 208 F. 3d 1015, 2000 U.S. App. LEXIS 6826.

II. The phenomenon we see in this case is familiar. Congress passes a broadly worded statute. The agency follows with regulations containing broad language,

open-ended phrases, ambiguous standards and the like. Then as years pass, the agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in the regulations. One guidance document may yield another and then another and so on. Several words in a regulation may spawn hundreds of pages of text as the agency offers more and more detail [\*13] regarding what its regulations demand of regulated entities. Law is made, without notice and comment, without public participation, and without publication in the Federal Register or the Code of Federal Regulations. With the advent of the Internet, the agency does not need these official publications to ensure widespread circulation; it can inform those affected simply by posting its new guidance or memoranda or policy statement on its web site. An agency operating in this way gains a large advantage. "It can issue or amend its real rules, i.e., its interpretative rules and policy statements, quickly and inexpensively without following any statutorily prescribed procedures." Richard J. Pierce, Jr., *Seven Ways to Deossify Agency Rulemaking*, 47 ADMIN. L. REV. 59, 85 (1995). n9 The agency may also think there is another advantage--immunizing its lawmaking from judicial review.

-----Footnotes-----

n9 How much more efficient than, for instance, the sixty rounds of notice and comment rulemaking preceding the final rule in *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 34, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983).

-----End Footnotes----- [\*14]

A. EPA tells us that its Periodic Monitoring Guidance is not subject to judicial review because it is not final, and it is not final because it is not "binding." n10 Brief of Respondent at 30. See GUIDANCE at 19. It is worth pausing a minute to consider what is meant by "binding" in this context. Only "legislative rules" have the force and effect of law. See *Chrysler Corp. v. Brown*, 441 U.S. 281, 302-03 & n.31, 60 L. Ed. 2d 208, 99 S. Ct. 1705 (1979). A "legislative rule" is one the agency has duly promulgated in compliance with the procedures laid down in the statute or in the Administrative Procedure Act. n11 If this were all that "binding" meant, EPA's Periodic Monitoring Guidance could not possibly qualify: it was not the product of notice and comment rulemaking in accordance with the Clean Air Act, 42 U.S.C. § 7607(d), and it has not been published in the Federal Register. n12 But we have also recognized that an agency's other pronouncements can, as a practical matter, have a binding effect. See, e.g., *McLouth Steel Prods. Corp. v. Thomas*, 267 U.S. App. D.C. 367, 838 F.2d 1317, 1321 (D.C. Cir. 1988). If an agency [\*15] acts as if a document issued at headquarters is controlling in the field, if it treats the document in the same manner as it treats a legislative rule, if it bases enforcement actions on the policies or interpretations formulated in the document, if it leads private parties or State permitting authorities to believe that it will declare permits invalid unless they comply with the terms of the document, then the agency's document is for all practical purposes "binding." See Robert A.

Anthony, Interpretative Rules, Policy Statements, Guidances, Manuals, and the Like--Should Federal Agencies Use Them to Bind the Public?, 41 DUKE L.J. 1311, 1328-29 (1992), and cases there cited.

-----Footnotes-----

n10 Our jurisdiction extends to "any ... nationally applicable ...final action taken by" the EPA "Administrator." 42 U.S.C. §7607(b)(1). The Guidance issued over the signatures of two high level EPA officials rather than the Administrator. EPA does not, however, contest petitioners' assertion that because "the document was drafted, and reviewed by, high ranking officials in several EPA offices, including EPA's lawyers, there is no reason to doubt the authors' authority to speak for the Agency." Brief of Petitioners at 42. See *Her Majesty the Queen v. EPA*, 286 U.S. App. D.C. 171, 912 F.2d 1525, 1531-32 (D.C. Cir. 1990); *Natural Resources Defense Council, Inc. v. Thomas*, 269 U.S. App. D.C. 343, 845 F.2d 1088, 1094 (D.C. Cir. 1988). [\*16] n11 We have also used "legislative rule" to refer to rules the agency should have, but did not, promulgate through notice and comment rulemaking. See, e.g., *American Mining Congress v. Department of Labor*, 302 U.S. App. D.C. 38, 995 F.2d 1106, 1110 (D.C. Cir. 1993). In this case, by "rule" we mean the following:

... the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency....

5 U.S.C. § 551(4).

-----End Footnotes-----

-----Footnotes-----

n12 5 U.S.C. § 552(a)(1)(D) requires publication in the Federal Register of all "interpretations of general applicability." Compare 5 U.S.C. § 552(a)(2)(B), requiring agencies to make available for inspection and copying "those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register."

-----End Footnotes-----

When a federal agency chafes at statutes promulgated by Congress, it simply ignores the statutes by issuing "guidance" documents. There is no incentive for a state or a local jurisdiction to comply with the Clean Air Act's SIP and SIP regulation approval processes if EPA encourages state and local jurisdictions to ignore the Clean Air Act and NEPA. A SIP must contain more than serving statements.

On May 1, 2000, the United States Supreme Court delivered an opinion in Christensen v. Harris County, 529 U.S. 576, 586-587; 120 S. Ct. 1655, 1662-63 (2000). In the Harris County

case (Section III), "petitioners and the United States contend that we should defer to the Department of Labor's opinion letter...." ... "Specifically they argue that the agency opinion letter is entitled to deference under our decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)." ... **"Here, however, we confront an interpretation contained in an opinion letter, not one arrived at after, for example, a formal adjudication notice and comment rulemaking. Interpretations such as those in opinion letters-like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law-do not warrant Chevron style deference."** ... "As explained above, we find unpersuasive the agency's interpretation of the statute at issue in this case." ... "The text of the regulation itself indicates that its command is permissive, not mandatory." ... "To defer to the agency's position would be to permit the agency, under guise of interpreting a regulation, to create *de facto* a new regulation." The statutes of the Clean Air Act are controlling. Implementing regulations abound. there is no legally sufficient justification for regulation by "White Papers," particularly where they have not been subject to public notice and hearing.

66 Guidance documents have no place in a SIP submission until and unless the applicable supporting statutes are cited, and after the statutes are cited, the implementing regulations are cited. Guidance documents must support statutes and implementing regulations, not the other way around. The PM-10 SIP not complete with them. Too many in the environmental community rely solely on guidance documents to the point that they do not have any idea what applicable statutes and regulations apply in any given situation. This PM-10 SIP is legally insufficient without proper citations to law.<sup>19</sup>

### CAA § 116

67 Petitioner requests that the EPA disallow any provision of the proposed SIP that is less stringent than the existing 1979 SIP. Among those relaxed regulations are the AQD's regulations in Section 12 that are less stringent for LAER and federally enforceable offsetting emission reductions than the corresponding regulations of Section 15 of the 1979 SIP. Petitioner requests a "side-by-side" comparison of each control measure in the proposed SIP with the existing SIP. Petitioner requests a copy of whatever each agency claims is the existing SIP. Petitioner requests evidence that anyone in the EPA or Clark County has any idea what is in the 1979 SIP and how they have accepted compliance with a SIP they know little or nothing about.

### Reasonable further progress

68 Petitioner requests a clear, unambiguous, written demonstration of how the Plan complies with the requirement for Reasonable Further Progress. Chapter 5 of the proposed Plan defers a discussion and report until the year 2003. For this reason, among many others, the Plan is legally insufficient and must be rejected. Specifically, Table 3-1 in the 1997 SIP submittal indicated, with Clark County Commission approval, that annual valley emissions were 87,261 tons in 1995. There were numerous exceedances reported in 1995. Petitioner requests a demonstration that shows clearly the proposed attainment inventory and how that value correlates to the 1997 SIP submittal. According to Section 5.6 of the instant Plan, "... the control measures result in daily

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<sup>19</sup> Any master's level style manual would pursue this issue in more detail.



emissions of ... 199.46 tons ... 2006 respectively." That works out to 72,802.9 tons in 2006, based on a 365 day year. That value is also a value projected for the "new" nonattainment area listed as the BLM disposal area. The record shows that 50 exceedances were reported in 1996, which would have emissions not far from the inventory reported for 1995. Consequently, attainment of the NAAQS is not demonstrated by a minor reduction, on paper only, to the level of 72,802.9 tons. When the valley's runaway growth since 1995 are added to the equation, the data projections are not real, credible or quantifiable. We again note that all data since at least 1990 has never been approved after public scrutiny.

#### **A failure to recruit and retain adequate personnel pursuant to CAAA §110(a)(2)(E)**

Adequate Personnel, Funding, and Authority. Section 110(a)(2)(E)(I) of the Clean Air Act requires that implementation plans provide necessary assurances that the state (or the general purpose local government) will have adequate personnel, funding and authority under state law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (51.230-232) and for resources in 40 CFR 51.280. States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

70 The May 2001 Serious Plan does not adequately address personnel and funding for the air program in the Las Vegas Valley. The Plan must detail the political structure, the organization, the authority, the number and qualifications of personnel needed to carry out the air program as well as the funding level and where the money is coming from. There must be a commitment to these levels for five years.

71 The Plan does not address the issue of recruiting and retaining adequate, competent, well educated personnel who still have their integrity intact. According to p. 5-27 of the ENVIRON Report, the "Staff Management" of the local air program received a rating of 1.91, which ENVIRON described as "Seriously Deficient." From pp. 1-2 of the ENVIRON Report, **"Significant organizational improvements are needed to effect a long term, productive, air quality program that has the public trust."** In fact, ENVIRON goes on to say on pp. 1-4, **"Air quality plans for attaining and maintaining the NAAQS for PM-10, CO, and ozone (due to the new standard) need to be done much better than in the past."** One of their recommendations supporting their statement is found on pp. 1-5, **"Elimination of Air Quality Division of the County Health District (and) elimination (sic) of Clark County Department of Comprehensive Planning's air management functions."** In other words, the consultant for the State of Nevada recommends disbanding the division now in charge of the local air enforcement program in Clark County. The instant Plan depends upon AQD enforcement the way it is currently organized. Regardless of what any new entity might be called, it will be staffed by many of the same players. The lack of commitment and enforcement will remain. The political message will not change.

## Leadership and integrity

It is a fact that the EPA approved a §173 NSR SIP. That SIP was approved in 1979 and was amended in 1981, 1982 and 1999. The 1999 SIP amendments are less stringent than earlier SIP regulations, EPA and CCHD disclaimers notwithstanding. With the ambient air PM-10 monitors placed upwind of the points of highest pollutant impact, the true nonattainment status of the valley is not in the PM-10 SIP submittal. APCD has done everything possible to understate the air pollution truth. The issue is PM-10 emissions concentrations vs. reported emissions concentrations. **The issue is top management leadership and integrity.**

CCHD is tasked with the implementation, including monitoring and enforcement, of this Plan. In p. 11 comments dated June 19, 2000 that responded to ENVIRON Report findings that were critical of the management of the Clark County air program, the Department of Comprehensive Planning stated, **"Finally, the report involves a lot of discussion about what an agency needs to be effective. The key, which should have been emphasized more, is knowledgeable, experienced and dedicated staff that are competently managed. Changing structure, adding funds or giving the state agencies a larger role will all be for naught if this central issue is not addressed comprehensively."** Amen.

The 2001 Nevada Legislature made it clear that it has no confidence in AQD. The Legislature declined to fund the Clark County Clean Air Act enforcement mess. S.B. 357 would have raised the smog fee in Clark County to pay for air quality control. The bill died at the 2001 session deadline. The millions that Clark County was hoping to have to fund a reorganization will not be available.

Governor Guinn then voted with his pen and vetoed S.B. 536 which would have created a single air pollution control agency in the county. The combination of the two defeats is a serious blow to Clark County's ability to avoid a Federal Implementation Plan (FIP) that everyone knows has to come. In the meantime, the EPA has not taken action to implement a Federal Implementation Plan (FIP), the only legally sufficient action left to the EPA by law.

"Plan B" is a county take-over of Clark County Health District's Air Quality Division (AQI) and a merger of AQI with Clark County's Comprehensive Planning Department. At a time when air pollution enforcement needs a professional staff and approach, we see the county retaining its business as usual approach. The county has not been able to hire or retain those who have the academic and administrative credentials necessary to run a multi-million dollar program. The county does not have the money necessary to run a program whose theme is the unrestricted issuance of building and dust control permits.

Clean Air Act attainment and a runaway growth are incompatible. The four highest level AQI executives have left over the last two to three years. The county manger just quit in disgust over Clark County politics. The Clark County runaway growth train is accelerating and there is no steady hand on the throttle. A train wreck is coming. It is foolish and a waste of valuable time for anyone in the EPA to consider any action other than a federal implementation plan (FIP).

## The CCHD is in disarray

So much money has gone to (1) attorneys to defend an increasing number of whistleblower and air pollution source suits and (2) salaries, benefits and pensions the CCHD is having financial problems. Spending and future obligations are over budget. Current personnel levels are low and morale is low. The level of experience and engineering qualifications is appalling low. CCHD does not have the personnel or the expertise to enforce SIP requirements. No one knows what the reorganization plan will be or where the money to run the new organization will come from. CCHD cannot demonstrate that it is qualified to enforce its SIP requirements. Nevada's governmental structure is too decentralized to cope with the problem. The State of Nevada is ordering an emissions reduction credit (ERC) audit that Clark County does not want. This is not an organization the EPA should support without a very careful investigation.

## Additional comments

1. **ENVIRON Report.** Petitioner objects to the failure of the Plan to consider the findings and the recommendations of the Nevada Legislature's S.B. 432 subcommittee ENVIRON report which Petitioner has adopted herein by reference, *infra*. That report questions the judgment, competence, integrity and credibility of the Clark County Health District's Air Quality Division ("AQD")(formerly Air Pollution Control Division or APCD). It is well known that the County claims it is moving to make some of the changes recommended in the ENVIRON report which may eventually eliminate the AQD. The political power circles in Clark County have no intention of making substantive changes. There is no evidence that the elected officials are about to do anything other than conduct business as usual with an all elected official board. The ENVIRON report recommends changes in administrative personnel that are overdue.
2. **Missing conformity determinations.** Petitioner objects to the fact that the County and the EPA are attempting to approve a PM-10 SIP without credible emissions budgets and without first requiring valley federal agency conformity determinations.<sup>20</sup> Without valley federal agency conformity determinations, Clark County has no data and no way to know the extent of the valley's federal agency activities that directly or indirectly cause air pollution. See the CAAA §§ 176(c), 40 CFR § 51.850, *et seq.* and 40 CFR § 93.150, *et seq.* and 69 FR 18911-18918, April 10, 2000, Transportation Conformity Amendment: Deletion of Grace Period, Final Rule at 18912-18913. Both the County and the EPA have failed in their oversight and agency coordination responsibilities.
3. **Missing Federal Implementation Plan.** Petitioner objects to the failure of the EPA to implement the only remedy lawfully available to the EPA, a Federal Implementation Plan (FIP). Nevada's own legislative ENVIRON report makes it clear that anything coming from the AQD is suspect. The Plan relies upon AQD's monitoring and other made-up numbers. For the reasons given herein, the instant Plan is legally insufficient and may not lawfully be

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<sup>20</sup> PM<sub>10</sub> conformity determinations means the total of ongoing, non-exempt, non-de minimis, activities that cause air pollution initially, and as amended from time to time on a project by project basis.

approved. The EPA has enough experience from the litigation surrounding the Phoenix, Arizona Federal Implementation Plan ("FIP") to know what the statutes require and simply ignores the requirements.

- 72 4. **SIP Plan relaxations.** Petitioner objects to the Draft PM-10 Plan's violations of the Clean Air Act regarding the relaxation of prior approved Plan requirements. Section 116 of the
- 73 instant Plan, the County proposes to relax the boundary and corresponding emissions inventory of the nonattainment area, the requirement for Lowest Achievable Emission Rate (LAER), and the requirement for federally enforceable offsetting emission reductions for particulate matter. The Draft PM-10 Plan is not proposing to achieve reasonable further progress, it is proposing to simply change the rules on paper in the best tradition of a bureaucratic shell game.
- 74 5. **Wind-speed evasions.** Petitioner objects to the narrowed scope of the Plan. According to the County, exceedances occur primarily when there are windy conditions, especially those windy conditions when wind-speed exceeds 35-40 miles per hour. Every hydrographic basin in the County has periods of time when the wind-speed exceeds this magic threshold as determined by Clark County. By not monitoring the air in the other hydrographic basins, or by concealing the exceedances in the few airsheds where monitoring is conducted, the County misrepresents the attainment status of those airsheds. By the County's own data, every air shed in the County should be re-classified as a PM-10 nonattainment area. The entire Plan must be re-fabricated to address the nonattainment status of the entire county, and not the reduced BLM disposal area as proposed in the Plan.
6. **Clark Air Act evasions.** In its wisdom, the EPA allows local jurisdictions to implement the CAA from the bottom up rather than from the top down. That is a very efficient way of defeating the intent of Congress when it promulgated the CAA. Clark County does not go too far up the regulatory ladder so that it does not have to face a lawful emission inventory and conformity determination process. That way, Clark County is able to ignore air pollution limits since the EPA has no way of knowing what the nonattainment, attainment or unclassified air pollution area emission inventory totals really are. If the EPA is trying to comply with the language, spirit and intent of the CAA, working from the bottom up is a fundamental error. If, on the other hand, the intent is to ignore the CAA, current Clark County/EPA strategy is brilliant. Each jurisdiction goes through the motions of compliance. No one knows the difference since the final steps including an approved, CAA 1990 amendments SIP, lawful emissions inventories and conformity determinations are never completed. That is the Clark County thirty-year, scofflaw success story. A local agency with this track record should be out of business instead of administering any Clean Air Act program. The way to put the local agency out of business is through a Federal Implementation Plan ("FIP").

#### **Legally insufficient**

The Plan fails to ensure that the citizens of the Las Vegas Valley nonattainment area receive the full benefit of the public-health based protections guaranteed to them under the Act.

## Clean Air Act sixty day notice

This comment document is also an addendum to Petitioner's prior sixty-day notices of intent to sue following section 304 of the Clean Air Act, 42 U.S.C. § 7604, and related regulations 40 C.F.R. Parts 54 and 70. This comment document notices the NEC's and Hall's intention to bring a civil action against the U.S. Environmental Protection Agency ("EPA"), the State of Nevada ("State"), the Clark County Commission ("CCC"), the Clark County District Board of Health ("CCHD") and its Air Quality Division ("AQD").

Regulator negligence and malfeasance has left Clark County citizens without the protections ordinarily afforded by approved SIPs. The only way citizens have a way to ensure that actions within polluted areas will not further degrade those areas is by legally sufficient SIPs that are not misleading. The lack of approved SIPs undercuts the CAA's conformity provisions. As we have noted, no federal agency operating in Clark County has ever completed a legally sufficient transportation or general conformity determination. Even if conformity determinations were completed, they could not conform to CAA 1990 amendment SIPs that do not exist. Each Clark County certification of compliance with any SIP that Clark County has ever made is misleading to the EPA, other federal agencies and the citizens who live in or visit the Las Vegas nonattainment area. The most important misrepresentation is that there is compliance in the Las Vegas Valley anywhere when there are no conformity determinations. We ask, conformity to what? The EPA has allowed never-ending misrepresentations to continue beyond all statutory boundaries.

In full recognition of this regulatory void, valley promoters of air pollution sources such as the one described herein have cynically championed projects that violate the NAAQS. Legally sufficient SIPs in the Las Vegas Valley serious nonattainment area would have prevented violations of the NAAQS. No legally sufficient SIP would permit the current levels of air pollution emitted by valley sources of air pollution.

### Request for extension of the attainment date for PM-10

The Clean Air Act and Amendments (CAAA), 42 U.S.C. 7401-7671q, CAAA § 101 *et seq.*, implemented health based standards for limiting the concentration of air pollutants in the ambient air. Particulate Matter (PM-10) is one of those air pollutants. A standard was adopted for PM-10. The standard for PM-10 pursuant to the National Ambient Air Quality Standards (NAAQS), is an average of 150 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) based upon any continuous 24 hour period of time. This is referred to as the 24-hour standard. The annual standard is 50  $\mu\text{g}/\text{m}^3$ . Clark County reports monitoring values that routinely exceed both standards.

Ambient air monitoring instruments measure the concentration of a particular pollutant in the ambient air and are subject to mathematical calculations prior to reporting. If a monitor measures, and the reporting agency actually reports a concentration of a particular pollutant in excess of the standard correlated to various statistics, the Governor of a state can petition EPA to have the area classified as a nonattainment area pursuant to §107(d)<sup>21</sup> of the CAA.

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<sup>21</sup> All subsequent statute citations are to CAA citations unless otherwise noted.

75 Depending upon the severity of the concentration air pollution exceedances in a nonattainment area, EPA further classifies the area as a moderate or serious nonattainment area. State or local governments are allowed a period of time in order to attain compliance with the NAAQS [§188]. According to §188 (c) (2), "For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 107(d)(4), the date shall not extend beyond December 31, 2001." The Las Vegas Valley was declared a nonattainment area and this regulation applies.

76 Additionally, the NEC has provided evidence that the previous SIP (1979), as amended) requirements have not been complied with or enforced in Clark County by the AQD or the EPA. SIP requirements for LAER and federally enforceable offsetting emission reductions (SIP §15.14) have *never* been implemented, enforced, or complied with in Clark County.

Nevertheless, according to the instant Plan (Section 1.1) "Since attainment of the 24-hour PM-10 NAAQS with the Las Vegas Valley is not feasible by 2001, this document includes a formal request to the U. S. EPA for a five-year extension of the 24-hour NAAQS attainment date from 2001 to 2006." The granting of an unlawful extension of time is an evasion of the statutes promulgated by Congress. Knowing and willful evasions of the law are not in the job description of any federal, state or local official. Legally insufficient extensions of time to comply invite litigation.

CAAA Section 188 (e) governs the extension process. There are several criteria that must be met before an extension can be granted. For example, "the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c), if attainment by the date established under subsection (c) would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area." Later, in the same CAAA section, "The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years."

Petitioner objects to the EPA granting any extension for attainment of the NAAQS or reasonable further progress in Clark County for the reasons given herein.

The County waited until late in the year 2000 to develop a plan that was designed solely for the purpose of obtaining another five year extension of time to comply with the Clean Air Act. The proposed Plan is not a serious attempt to convince any but the very gullible that the County has any hope of reaching clean air attainment. Presenting a plan more than 10 years late is evidence of Clean Air Act evasion. The plan submitted is not a legally sufficient justification for determining whether attainment is practicable or impracticable in the County. By analogy, the extension of time rubber band stretched to its limit and snapped a long time ago. The only lawful alternative left is a Federal Implementation Plan ("FIP"). A Clark County FIP is long past due.

Clark County's record is thirty years Clean Air Act disdain. As we have discussed, Clark County had a SIP with requirements for LAER and federally enforceable offsetting emission reductions. Despite that requirement, LAER requirements were never implemented, enforced, or complied with. That alone is reason to require a Federal Implementation Plan ("FIP"). The EPA may not lawfully ignore Clark County's repeated patterns of Clean Air Act evasion.

Normally, LAER means the "lowest achievable emission rate." To the jaundiced, Clark County's definition is "least achievable emission reduction." As but one example, Clark County issued an Authority to Construct ("ATC") permit without public notice or hearing to James Hardie Gypsum. LAER was required by the AQD SIP regulations. AQD responded by allowing a control scheme of using only 0.5% moisture over the crushers and screens in the processing plant. Since native desert soil in the Las Vegas area has a nominal 0.45% inherent moisture level, AQD essentially provided the source with their "no control equals LAER" mandate. Emissions are not quantified at this source. Instead, emissions are calculated as though LAER was applied. By this means, another source has escaped AQD's control requirements. The reality is no control with AQD sanction. See Conditions B29 and B30 of the proposed Part 70 permit for JH Gypsum for the reference documentation. It used to be that AQD required a minimum of 1.5% moisture in the permit language. That would meet BACT. With 0.5% moisture, AQD went a step further and did not even meet its own BACT requirement, much less LAER.

Another reason why the granting of the requested extension of time, and eventual approval of the Plan, is unlawful is found in the CAA, Section 116. This section states in part, "...if an emission standard or limitation is in effect under an applicable implementation plan or under Section 111 or 112, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section." The proposed SIP is replete with relaxed requirements as compared to the previous SIP. For that reason, it is legally insufficient. Among these relaxed requirements are:

- There is no prohibition of the establishment of a Class III area in Clark County. That requirement is mandated in the 1979 SIP.
- Stationary Source requirements for LAER on "significant" (as defined in the 1979 SIP) sources of particulate matter (at the time, the SIP referred to Total Suspended Particulate of which PM-10 is a subset).
- Federally enforceable offsetting emission reductions.
- The designation of the nonattainment area, which has been reduced in size from the entire hydrographic basin in the existing SIP to the "BLM Disposal Area" in the proposed plan.

Executive Order 13045: Petitioner requests that the EPA comply with Executive Order 13045 re: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). The promulgation of a regulation involving a serious PM-10 attainment area is "economically significant" as defined under Executive Order 12866. Particulate Matter

78 involves a health and safety risk that has a disproportionate effect on the children living in all the nonattainment areas of Clark County, designated or not. Any regulation involving a PM-10 SIP in a serious nonattainment area meets both criteria. The Agency must evaluate the environmental health or safety effects of the planned rule on children in the areas with highest PM-10 concentrations, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. One of several alternatives that must be considered under the totality of the circumstances that exist in the Las Vegas Valley is the statutory requirement for a Federal Implementation Plan (FIP).

79 Executive Order 12898: Petitioner requests that the EPA consider the adverse health effect impacts the promulgation of a regulation approving a PM-10 SIP will have on minority and low income populations who are disproportionately represented in the County's nonattainment areas, designated or not. Petitioner requests that the EPA consider the disproportionate economic impact on such a population where the submitted PM-10 SIP proposes an inverse relationship between valley growth and Particulate Matter emissions. Minority and low income populations who are disproportionately represented in the nonattainment areas generally live in the lowest areas of the valley by altitude where PM-10 tends to collect. To the extent that the theory behind the assumptions made in the PM-10 SIP submission is in error, minority and low income populations will be heavily impacted.

#### **Supporting documentation**

The following documents are made a part hereof and are adopted herein for all purposes. One of the purposes of adopting documents by reference is to substantiate the allegations herein.

#### **Nevada Legal Actions:**

14. Southern Nevada Home Builders Association; American West Homes, Incorporated; Falcon Development Corporation; Lewis Homes of Nevada, and Longford Homes of Nevada, Inc., v. Clark County Health District, Case No. A321782 dated July 30, 1993.
15. Vosburg Equipment and Quality Sand & Gravel v. Clark County Health District, Case No. A403414 dated May 18, 1998.

#### **United States District Court for the District of Nevada:**

3. Hall v. Mineta, CV-S-01-0609-KJD-PAL, May 25, 2001 re: Federal Highway Administration Clean Air Act action.

#### **Ninth Circuit Court of Appeals:**

16. Hall v. EPA, No. 99-16153, Judicial Review re: Del Webb land exchange. Ninth Circuit Court of Appeals (fully briefed).
17. Hall v. EPA, No. 99-70853, Judicial Review re: EPA approval of Rules 0, 12 and 58. Ninth Circuit Court of Appeals (fully briefed).



18. Hall v. EPA, No. 00-70257, Judicial Review re: Clean Air Act Operating Permit Program, Pacific Coast Building Products, Inc. (PABCO). Ninth Circuit Court of Appeals (fully briefed).
19. Hall v. EPA, No. 00-71676, Judicial Review re: EPA finding of CO emissions budgets for transportation adequacy. Ninth Circuit Court of Appeals (opening brief filed).
20. Hall v. Abbey, No. 01-15157, Judicial Review re: Resource Management Plan (RMP). Ninth Circuit Court of Appeals (fully briefed). See [www.necnev.org](http://www.necnev.org).

**Department of Interior, Interior Board of Land Appeals:**

21. IBLA 98-108, 98-102 (149 IBLA 130-149) re: EA NV-053-97-046, Diamond Construction Company Material Sale Contract; American Sand and Gravel, L.L.C., Material Sale Contract (Lone Mountain Community Pit).
22. IBLA 2000-45 re: Hall v. Babbitt (CV-S-99-0792-PMP), Lone Mountain Pit (Las Vegas Paving) (fully briefed).
23. IBLA 2000-351 re: Freeman et al. v. Clark County Department of Aviation (BLM 57230) re: Henderson Executive Airport appeal (fully briefed).

**Comment/Administrative Protests:**

24. Comments and Objections Re: Pacific Coast Building Products, Inc. (PABCO), Issuance of a Part 70 Operating Permit to January 24, 1999, Revised, Exhibits "A" & "B"; Certificate of Service, all dated February 22, 1999.
25. Petition Objecting to PABCO Gypsum, a Division of Pacific Coast Building Products, Inc., Issuance of a Part 70 Operating Permit A00011 May 13, 1999; Exhibits "A" & "B"; Certificate of Service all dated June 5, 1999.
26. Post-Hearing Addendum to Comments and Objections Re: Pacific Coast Building Products, Inc. (PABCO), Issuance of a Part 70 Operating Permit to January 24, 1999, Certificate of Service, February 22, 1999, dated April 23, 1999.
27. Comments and Petition Re: Disposal Urban Maintenance Processing Co. (DUMPCO), Issuance of an Authority to Construct to March 7, 1999; Exhibits "A" & "B"; Certificate of Service, all dated April 6, 1999.
28. Comment Addendum Re: Comments and Petition Re: Disposal Urban Maintenance Processing Co. (DUMPCO), Issuance of an Authority to Construct to March 7, 1999; Exhibits "A" & "B"; Certificate of Service, all dated April 6, 1999, dated April 26, 1999.
29. Comments and Administrative Petition Re: Nevada Ready Mix (NRM), Issuance of an Authority to Construct/Operating Permit to Dated April 4, 1999; Exhibits "A" - "K"; and Certificate of Service, all dated April 27, 1999.

30. Post-Hearing Addendum to Comments and Administrative Petition Re: Nevada Ready Mix (NRM), Issuance of an Authority to Construct/Operating Permit, dated April 4, 1999 and Certificate of Service.
31. Administrative Petition Re: Proposed Nevada SIP Amendment Adding New Sections 0 and 12 and Repealing Section 15 of the Air Pollution Control Division Regulations; Certificate of Service, all dated April 13, 1999.
32. Comments and Administrative Petition Re: Chemical Lime Company (CLC), Issuance of an Authority to Construct/Operating Permit, April 18, 1999; Exhibits "A" - "F"; and Certificate of Service, all dated May 17, 1999.
33. Amended Request for an Appeal and a Declaratory Order Re: Capital Cabinets Corporation, Issuance of an Authority to Construct/Operating Permit to, June 23, 1999; Exhibits A, B, & C; and Certificate of Service all dated August 16, 1999.
34. Comments and Administrative Protest re: Proposed Issuance of an Authority to Construct and Operating Permit to Southern Nevada Liteweight, January 9, 2000.
35. Comments re: Las Vegas Convention and Visitors Authority (Cashman Center & 3159 Paradise Road), Issuance of Authority to Construct dated January 16 and 23, 2000.
36. Comments and Administrative Protest re: Simplot Silica Products (SIMPLOT), Issuance of a Part 70 Operating Permit, October 1, 1999. (EPA Notice of Violation issued September 24, 1999).
37. Comments and Administrative Protest re: Royal Cement, Issuance of an Authority to Construct/Operating Permit, January 9, 2000.
38. NEC Comments on the Disapproval of Moderate and Serious Nonattainment Area State Implementation Plans (SIPs); Nevada-Las Vegas Nonattainment Area; PM-10; 40 CFR Part 52, NV-022-0022; FRL-6715-9 dated August 14, 2000.
39. Comments and 40 CFR § 70.8(d) Administrative Complaint re: Kerr McGee Chemical LLC, Issuance of an Authority to Construct/Operating Permit, dated February 10, 2001. See [www.necnev.org](http://www.necnev.org).
40. First Revised Comments and EPA Petition for Administrative Action re: Mirant Las Vegas, LLC, Issuance of an Authority to Construct, February 17 & 21, 2001, dated March 20, 2001. See [www.necnev.org](http://www.necnev.org).
41. Comments and EPA Petition for Administrative Action re: Duke Energy Moapa LLC, Issuance of an Authority to Construct, February 18, 2001, dated March 20, 2001. See [www.necnev.org](http://www.necnev.org).
42. Clark County/EPA Comments and EPA Petition for Administrative Action Submitted on Behalf of the Nevada Environmental Coalition, Inc. and Robert W. Hall dated April 16, 2001.

43. Sierra Club Comments regarding Draft PM-10 State Implementation Plan for Clark County dated April 17, 2001.
44. 27. Comments and EPA Petition for Administrative Action re: Proposed Issuance of an Authority to Construct for Modification #6 to Calnev Pipe Line, LLC dated May 6, 2001. See [www.necnev.org](http://www.necnev.org).
45. 27. Draft Environmental Impact Statement Comments and EPA Petition for Administrative Action re: Calpine Moapa Paiute Energy Center on Behalf of the Nevada Environmental Coalition, Inc. and Robert W. Hall dated May 29, 2001, Bureau of Indian Affairs, Department of Interior. See [www.necnev.org](http://www.necnev.org).
46. 27. (1) Clark County/State of Nevada/EPA Comments and (2) and EPA Petition for Immediate, Emergency Administrative Action submitted on behalf of the Nevada Environmental Coalition, Inc. and Robert W. Hall dated June 18, 2001.

**Clean Air Act Sixty Day Notice to Sue:**

47. Revised (05-05-99) Clean Air Act 42 U.S.C. §7604(b), 40 C.F.R. §54.3 (1994) sixty-day certified mail notice of suit & notice of service all dated May 5, 1999.<sup>22</sup>
48. (Note: For some time now, we have placed Clean Air Act sixty-day notices to sue in all of our petitions.)

**Reports:**

49. USEPA Enforcement Alert, Office of Enforcement and Compliance Assurance (2201A), Volume 2, Number 1, Office of Regulatory Enforcement, EPA-300-N-99-002 dated January, 1999.
50. NEC Report on Clark County's District Board of Health - Revision V, dated December 9, 1998. See [www.necnev.org](http://www.necnev.org).
51. ENVIRON Draft Final Report, "Study of Air Quality Programs in Clark County Nevada, dated June 23, 2000. See [www.necnev.org](http://www.necnev.org).

**Federal Register:**

52. \_\_\_ FR \_\_\_\_\_, August 16, 1994. State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally, Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 40 CFR Part 52.
53. 65 FR 18911-18918, April 10, 2000. Transportation Conformity Amendment: Deletion of Grace Period, Final Rule.

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<sup>22</sup> Most of the comment/protest documents listed also included a Clean Air Act § 304, 42 U.S.C. § 7604 sixty-day notice of intent to sue.

54. May 31, 2000, Technical Support Document for EPA's Notice of Proposed Disapproval of the Las Vegas Valley PM-10 Moderate and Serious Area Nonattainment Plans, U.S. Environmental Protection Agency, Region IX, Air Division.
55. 65 FR 37324, June 14, 2000. Approval and Promulgation of Implementation Plans; Nevada--Las Vegas Valley Nonattainment Area; PM-10, 40 CFR Part 52.
56. 66 FR 1046-1050, January 5, 2001. Finding of Failure to Submit a Required State Implementation Plan for Particulate Matter, Nevada-Clark County, 40 CFR Part 52.

**Statute:**

57. 167 F.3d 641, Environmental Defense Fund v. Environmental Protection Agency, dated March 2, 1999.

**Code of Federal Regulations:**

58. EPA 40 CFR Part 52 Final Rule Making a Finding of Failure to Submit a Required State Implementation Plan for Particulate Matter; Nevada--Las Vegas Valley dated August 31, 1999.

**Miscellaneous:**

59. Clark County Applicable State Implementation Plan Action Log updated July 19, 1996.

The above-named documents were previously served upon those named therein. Clark County officials and EPA officials both received service. The documents are also available upon request. Several of the documents listed above are available on the NEC Web site as noted.

The statements made herein are also supported by this Draft Particulate Matter (PM-10) State Implementation Plan (SIP) dated March 2001, the documents referenced therein, the documents served upon the NEC by Clark County Comprehensive Planning as supporting documents to the draft SIP submittal, and the documents referenced herein by the Petitioner.

**Relief sought**

Petitioner requests that the Clark County Commission disapprove the Plan for inclusion into the Nevada SIP. The Plan misrepresents and is not a Plan that the EPA could seriously consider. A credible Plan must be submitted in its place. Should the Clark County Commission approve the Plan, Petitioner requests that the EPA not accept the Plan as complete, and not approve the Plan.

Petitioner claims all of his rights including but not limited to those found at 42 USC § 7607, CAA § 307. §307(h) requires "...a reasonable period for public participation of at least 30 days...." The public was not given **reasonable** time to consider a revised plan this complex. Petitioner regrets that with more time, a more polished and complete presentation would have resulted.

The Plan submitted in 1997 by the Clark County Commission failed, and was eventually withdrawn. The instant Plan is worse than the 1997 submittal. Not only are the deficiencies of the earlier Plan still evident, new deficiencies were added that are much worse. The County Commission has ignored all prior NEC allegations. The County recently had to withdraw all prior PM-10 SIP submittals after the NEC's claims were confirmed in the process of evaluating the threat of a Sierra Club lawsuit. This Plan is nothing but a waste of good paper.

In the few days available, Petitioner and its supporting thin green line have discovered gross deficiencies in the Plan. If we had the time, we would attempt to replicate the data and many more deficiencies would be revealed. The deficiencies must be corrected. They cannot be corrected until the emissions inventory is credible and is fairly presented with integrity.

Two events must occur or the State of Nevada is going to lose not only Federal Highway funding, but BLM, FAA and other federal funding and cooperation in the very near future.

The first event that must occur is additional change in key AQD and CCHD personnel. The composition of the Clark County Health District Board must change. It is obvious that without serious change, Clark County will never submit a credible plan. The issue is integrity. CCHD had executives who have been working both sides of the street. The current board and management simply do not have the engineering and business skills to deal with a very slick crew. They do not know how to get out of the abyss they have created assuming for the sake of discussion, they wanted to cause a meaningful change to occur. CCHD does not have leadership at the top that has any intention, particularly with monitoring, enforcement and emissions inventories, of getting the job done. It is past the time when key personnel should be transferred pending a full and fair investigation.

The second event that must occur is that Clark County must recognize that it cannot continue to encourage large numbers of people to come to the valley. The valley must implement a moratorium on building and dust permits in order to slow down the runaway growth that causes PM-10 and other types of serious air pollution.

The Plan's air pollution emissions to reach attainment do not add up. AQD cannot hold a lid on this mess any longer. Those involved are nervous. They realize what they are doing is wrong. More and more people are volunteering information and the workers are refusing to take risks. Clark County has burned its candle at both ends for far too long. The day of reckoning has arrived. The days of runaway growth and disregard for the health and safety of Clark County citizens are over. Procrastination will not solve the problem this time. Clark County has run out of time.

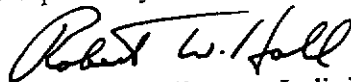
Petitioner further requests full EPA compliance with the language, spirit and intent of the Clean Air Act §113, 42 U.S.C. § 7413, Federal Enforcement, and §116 Retention of State Authority. Over the last three years, Petitioner has provided both the EPA Administrator and the Region IX Administrator with credible information that Clark County's violations of the Clean Air Act "are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively."

Approving a relaxed SIP contrary to §116, would serve no purpose other than to aid and abet continuing violations.

Petitioner requests that the EPA implement a Federal Implementation Plan (FIP) pursuant to §110(c)(1), and apply Sanctions §110(m) pursuant to §179(a), supra, without further delay. That means now, not months or years from now. Clark County has met all of the requirements for a FIP many times over. The public health and safety is held hostage while bureaucrats procrastinate.

In making this request in our own interest, we also honor those who have lost their lives or whose quality of life has declined as a proximate result of the acts of a few. We especially honor the memory of Elizabeth Gilmartin. May she rest in peace.

Respectfully submitted,



Robert W. Hall, as an Individual and as President  
Nevada Environmental Coalition, Inc.  
10720 Button Willow Drive  
Las Vegas, Nevada  
(702) 360-3118

Dated: June 18, 2001

CERTIFICATE OF SERVICE

I certify that a copy of the attached Clark County Draft PM10 SIP comments, petition and administrative complaint were served by first class U.S. Mail on the persons listed below on June 19, 2001.

  
Robert W. Hall

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Responses to comments received in letter from Robert Hall, NEC dated June 19, 2001:

This letter includes comments to the Clark County Department of Comprehensive Planning (CCDCP) on the PM<sub>10</sub> SIP and a petition for administrative action to the U. S. Environmental Protection Agency requesting imposition of a Federal Implementation Plan (FIP) on Clark County. The CCDCP has limited comment responses to those comments that are applicable to the SIP. Comments applicable to the U. S. EPA petition for administrative action are not germane to this SIP and the CCDCP has not provided responses to those comments. The following responses are numbered to correspond to the numbers in the left column assigned to the applicable comments in Mr. Hall's letter, as included in this Appendix.

1. The focus of the network does fall within the BLM disposal area, as it is the area of greatest concern due to the concentration of the Las Vegas Valley's population and the influence of anthropogenic activities. Micro-scale inventories from the five sites discussed in this SIP are the typical type of site, and are representative of the typical conditions and sources that lead to high levels of PM<sub>10</sub> in the BLM disposal area. The NAAQS, are health based standards, and the BLM disposal area evaluated in the SIP contains the majority of the population where monitoring would be applicable and required per EPA guidance (CFR40, Part 58). The PM<sub>10</sub> SIP does demonstrate attainment for the entire nonattainment area. The BLM disposal area was used for the modeling domain for several reasons as outlined in Appendix E, the primary reason being the limited modeling domain would provide justification for greater controls of man-made emissions. As stated in Appendix B and E, the emissions were predicted for both the entire nonattainment area and the BLM disposal area. U. S. EPA Region IX has approved the use of the BLM disposal area for the attainment demonstration and emission inventories. As noted in Chapter 3, Section 3.3 of the SIP, over 99 percent of the population in the nonattainment area reside in the BLM disposal area. The modeling and inventory projections, including population, were for the modeling domain. As the BLM disposal area is the modeling domain, projections were made for this area. The data for the nonattainment area was not mixed with the data for the BLM disposal area. They are clearly delineated in Chapter 3 and Appendix B of the SIP.
2. An independent report from a consultant (Ricondo and Associates – San Francisco, California) conducted and compiled for the Clark County Department of Aviation called: *PM<sub>10</sub> Emissions Inventory, McCarran International Airport, North Las Vegas Airport and the Henderson Executive Airport dated February 2000, Final Report*. This report was generated in support of CCDCP in its process of developing the state implementation plan for PM<sub>10</sub> emission inventories at the aforementioned airports. The emission inventories for the existing June 2001 PM<sub>10</sub> SIP are detailed and comprehensive based on the data and analysis supplied within this report (copy of this report can be obtained through the Clark County Department of Aviation, Las Vegas, Nevada). Several changes in operations are projected at McCarran International Airport that would



lead to lower emissions. These changes include electrification of gates and newer cleaner aircraft engines.

3. An independent audit of the emissions inventory was performed by Converse Consultants, Las Vegas, Nevada in August 2000 and again in April 2001 (both reports are contained in Appendix B of the SIP, dated June 2001), which established the emissions inventory accuracy of 99.9998542 percent.
4. As referenced in the SIP, Section 2.2, the Clark County Health District operates a particulate matter monitoring network in accordance with the Code of Federal Regulations (CFR), Title 40, Part 58 {as required by CAA Section 110 (a)(2)(B)(i)}. The network is extensive, currently including seventeen PM<sub>10</sub> air quality-monitoring stations within the nonattainment area and outlying areas. The network adheres to the federal monitoring objectives and monitoring site criteria. Annual Air Monitoring Network Review Reports are submitted by the health district to the U.S. EPA as required by 40 CFR 58.20(d). These annual reports provide a comprehensive review of the network including a site-by-site assessment of the adequacy of the network with respect to U.S. EPA siting criteria. The focus of the network does fall within the BLM disposal area, as it is the area of greatest concern due to the concentration of the Las Vegas Valley's population and the influence of anthropogenic activities. Furthermore, at a population of one million or more, Clark County is required to have 6-8 NAMS monitoring systems. Presently, within the BLM disposal area and the nonattainment (Hydrographic Basin 212) area there are 17 PM<sub>10</sub> sites. EPA Region IX has approved the use of the BLM disposal area for the attainment demonstration and emission inventories.
5. There is no proposal to modify, change or adjust the nonattainment area (Hydrographic Basin 212) contained in the SIP. The U. S. EPA through the appropriate public processes must approve changes to the nonattainment boundary. Clark County regrets any misunderstanding concerning boundary changes.
6. As is discussed in response number 5 above, there is no proposal to modify, change or adjust the nonattainment area boundary. The attainment demonstration utilizes the BLM disposal portion of the nonattainment area as representative of worst case conditions in the entire nonattainment area. Micro-scale inventories of the five sites discussed in this SIP are the typical type of site, and are representative of the typical conditions and sources that lead to high levels of PM<sub>10</sub> in the nonattainment area. The NAAQS, are health based standards, and the BLM disposal area evaluated in the SIP contains the majority of the population where monitoring would be applicable and required per EPA guidance (CFR40, Part 58). Clark County selected the BLM disposal area as the modeling domain for the attainment demonstration in consultation with U. S. EPA Region IX.

7. As discussed in response number 5, and reiterated in response number 6, there is no current legislation proposal(s) to modify, change or adjust the nonattainment area boundary. The U. S. EPA must approve any changes of the nonattainment area boundary. Further, the United States Congress must approve any changes of the BLM disposal boundary.
8. Chapter 3, and technical support documentation in Appendix B of the SIP, outline a complete breakout of the PM<sub>10</sub> influences and emission inventories from the entire nonattainment area including the areas outside the BLM disposal area. Although PM<sub>10</sub> is not considered a pollutant that travels a great distance from its source, these emissions are included because they may have a potential effect on particulate levels in the Las Vegas Valley. Furthermore, all control measures developed as a part of this SIP are being implemented throughout the nonattainment area.
9. Bureau of Land Management (BLM) personnel, and the Clark County Health District, Air Quality Division personnel (enforcement staff) are working toward solutions to address this problem. Furthermore, off-highway vehicle use on vacant land that has not been stabilized for vehicle use has been prohibited in Hydrographic Basin 212 under Section 90 of the Clark County Health District Air Quality Regulations (AQRs). Clark County has recently formed an off-road enthusiast/off-highway vehicle working group made up of the sport's participants, BLM, AQD, and staff from CCDCP. This working group is moving forward to preserve the sport while meeting the requirements for dust control and prevention of fugitive dust in Section 90 of the Clark County AQRs and attaining the PM<sub>10</sub> NAAQS in Hydrographic Basin 212.
10. The implemented dust control measures contained in AQRs 90 through 94 and including the Section 94 Handbook, apply to the entire nonattainment area, not just the BLM disposal area. Controlling the sources, regardless of location, will bring the entire nonattainment area into attainment, as there are no source categories in the nonattainment area that are not subject to controls. This approach is more health protective providing greater control of anthropogenic sources, which directly affect the target population(s) we wish to protect.
11. As discussed in response number 8, Appendix B of the SIP outlines a complete breakout of the PM<sub>10</sub> influences and emission inventories and the effect on the Las Vegas Valley (BLM Disposal Boundary) air quality. Specifically, disturbed vacant land issues and unpaved road issues are discussed in detail concerning BLM lands. As noted in the responses to the Robert Hall letter dated April 16, 2001 (Appendix P), conformity determinations are made after emission budgets have been established in the applicable SIP.
12. Section 110(a)(2)(A) of the CAA requires the SIP to contain enforceable emission limits and control measures. A comprehensive set of control measures and

commitments are set forth in Chapter 4. Emission limits are set forth in Chapter 5 and Appendix M of the SIP.

Clark County Air Quality Division Enforcement Staff are aggressively enforcing and monitoring compliance of AQR Sections 90 through 94, which were adopted in June 2000. As outlined in Appendix L, the ability to enforce and monitor adherence to AQRs and to monitor permit requirements will increase as AQD enforcement staff reach full staffing levels as detailed in Chapter 4, Section 4.8, Subsection 4.8.1 "Commitment for Additional Staffing Levels and Enhanced Enforcement Efforts" of the SIP (SIP Commitment).

Response to comments 2, 3 and 4 above, are applicable to address the emission inventories for the existing June 2001 PM<sub>10</sub> SIP and the Clark County monitoring network. Further, an independent audit of the emissions inventory was performed by an independent consultant, (both reports are contained in Appendix B of the SIP), which confirmed the emissions inventory accuracy.

Comments and questions concerning stationary sources are addressed in Section 4.6.1.1 of the SIP. Further, stationary sources are audited and emission tests are conducted to confirm emission rates.

Staff is unaware of any inappropriate modeling or inappropriate data used in preparation of the SIP. In addition, effort has been made to provide clearly communicated, detailed, and complete data as well as modeling analysis.

13. Previously articulated in earlier comments was the following paragraph which remains applicable concerning Code of Federal Regulations compliance: In early 1998, the CCHD PM Research Advisory Committee, together with AQD and CCDCP staffs began working with the CCHD Board of Health in commissioning and overseeing research work to develop more effective PM<sub>10</sub> control measures. The CCDCP and AQD staffs began work on developing an enhanced PM<sub>10</sub> regulatory program in 1999, based in part on this research. The CCDCP and AQD staffs began holding public workshops on more stringent and effective air quality regulations in September, 1999, and went on to hold a total of 20 workshops between September, 1999 and November, 2000. During the 1998 through 2000 timeframe, CCDCP staff were also updating and enhancing the PM<sub>10</sub> emission inventories. The CCDCP also contracted with outside consultants to assist in this effort. CCDCP received expert technical advice through a contract with DRI to assist in developing control measures and assessing control measure impacts. These efforts are documented in Chapter 4 and in Appendices C, D, and F.

The control measures and SIP commitments set forth in Chapter 4 and the MSM analysis supporting these measures along with commitments in Chapter 6 do provide a solid basis for attaining the PM<sub>10</sub> NAAQS. Furthermore, attainment criteria and the attainment demonstration are discussed at length in the SIP

document. The very sound control measures and commitments contained in this SIP will be more than adequate to attain the NAAQS and maintain lower levels of PM<sub>10</sub> in the ambient air.

14. Information on rollback modeling is contained in Chapter 5, and Appendix K, of the SIP.
15. Our response to Comment 4 addresses the ambient monitoring.
16. As referenced in the SIP, Section 2.2, the Clark County Health District operates a particulate matter monitoring network in accordance with the Code of Federal Regulations (CFR), Title 40, Part 58. The network is extensive, currently including seventeen PM<sub>10</sub> air quality monitoring stations within the nonattainment area and outlying areas. The network adheres to the federal monitoring objectives and monitoring site criteria. Annual Air Monitoring Network Review Reports are submitted by the Health District to the U.S. EPA as required by 40 CFR 58.20(d). These annual reports provide a comprehensive review of the network including a site-by-site assessment of the adequacy of the network with respect to U.S. EPA siting criteria. The focus of the network does fall within the BLM disposal area, as it is the area of greatest concern due to the concentration of Clark County's population and the influence of anthropogenic activities. The network has evolved over the years and continues to change as new monitors are added and others relocated to better meet siting criteria, particularly as it relates to population growth in the area. As an example, the network of PM<sub>10</sub> sites has grown from nine in 1995 to the present 17. The Frias PM<sub>10</sub> site was operated for several years at a location outside the BLM boundary but within the nonattainment area (the site was in the south side of the valley west of I-15). From 1988 through 1994 the site never recorded an exceedance of either the annual or 24-hour standard. The site was closed in 1995 and was replaced with a new neighborhood site located at Paul Meyer Park on the west side of the valley.
17. There were 18 violations of the annual standard for the year 1996. Furthermore, the data used for the analysis and attainment demonstration were the years 1997 through 1999, with the base year being 1998. In developing the SIP, the CCDCP reviewed the most recent three years of available data from the NAAMS/SLAMS monitoring network for Clark County. This is the data set that U. S. EPA requires to be used for developing a SIP. Specifically, U. S. EPA guidance was used in determining the time frame for analysis, as discussed in both Chapter 3 and Appendix A, pg. A-1 (*PM<sub>10</sub> SIP Guideline*, U. S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 277711; EPA-450-2-86-001, June 1987.).
18. Siting a monitor next to a large point source would not comply with NAMS/SLAMS siting criteria. Therefore, monitors are not located near large point sources. In addition, we have a SIP commitment to conduct a PM<sub>10</sub> saturation

study, which is described in the SIP, Section 4.8.2.2. As stated, the focus of the study will be on neighborhood impacts of major sources, particulate concentrations in geographic locations not well covered by the current monitoring network due to growth, and on inter-basin intra-basin transport during high wind events.

19. As referenced in the SIP, Section 2.2, the Clark County Health District operates a particulate matter monitoring network in accordance with the Code of Federal Regulations (CFR), Title 40, Part 58. In addition to maintaining an extensive NAAMS/SLAMS monitoring network in Hydrographic Basin 212 (the PM<sub>10</sub> nonattainment area), the Clark County NAAMS/SLAMS monitoring network includes background PM<sub>10</sub> monitors in Apex Valley (Apex), Ivanpah Valley (Jean), and Eldorado Valley (Boulder City). The data from all sites are quality assured and reviewed during the first half of each calendar year. The NDEP is promptly notified if any site exceeds the NAAQS for any pollutant. The State of Nevada then notifies U. S. EPA Region IX and the U. S. EPA then redesignates an area nonattainment if there is a need to do so.

As discussed in comment 18 above, we have a SIP commitment to conduct a PM<sub>10</sub> saturation study (Section 4.8.2.2). As stated in Section 4.8.2.2 of the SIP, the study will focus on later years to continually address and update inventories, (neighborhood impacts of major sources) as development continues.

20. The 1979 SIP was for the Total Suspended Particulate (TSP) standard, not the PM<sub>10</sub> standard. Because TSP is a different pollutant from PM<sub>10</sub>, provisions contained in the 1979 SIP are not applicable to a PM<sub>10</sub> SIP.

BACT and LAER requirements (Stationary Sources) are part of the permit process with AQD. AQD enforcement staffs are moving forward with addressing any problems concerning air quality with these facilities. As previously discussed, AQD enforcement staffs are aggressively enforcing and monitoring compliance of AQR Sections 90 through 94, which were adopted in June 2000. Further, as outlined in Appendix L, the ability to enforce and monitor adherence to AQRs and to monitor permit requirements will increase as AQR enforcement staff reach full staffing levels by the end of 2001.

Clark County has no empirical data, which indicates that power plants within the nonattainment area or BLM Disposal area contribute to violations of the NAAQS. Major utility sources that are outside the nonattainment boundary are not required to be evaluated in this SIP.

21. Response to comment 16 is applicable to this comment regarding the monitoring network adequacy.
22. We agree that the thousands of visitors to the outlying federal lands are entitled to clean air. This agreement is supported in the AQRs and reiterated in the SIP,

that dust control measures established in the Air Quality Regulations 90 through 94 are applicable to all of the nonattainment area, not just the area within the BLM boundary.

23. The commitment to conduct a PM<sub>10</sub> saturation study is described in the SIP, Section 4.8.2.2. As stated, the focus of the study will be on neighborhood impacts of major sources, particulate concentrations in geographic locations not well covered by the current monitoring network due to growth, and on inter-basin intra-basin transport during high wind events. This commitment does not constitute an acknowledgement that the current monitoring network is inadequate, but rather ensures that the monitoring network will continue to meet and exceed federal requirements.
24. In conjunction with response given in number 23 above, the reason stated for the study to be conducted in later years (2003 to 2006), rather than now, is to measure the impact of growth in future years.
25. The federally enforceable reduction credit program set forth in AQR Section 58 complies with the provisions of Section 173(a)(1)(A) of the CAA. The local offset credit program is a separate program not used as part of the attainment demonstration in the SIP (Chapter 3, Pg. 3-9, ERC Program Not Included in SIP Inventories).
26. As discussed in number 25 above, "The local offset credit program is a separate program not used as part of the attainment demonstration in the SIP (Chapter 3, Pg. 3-9, ERC Program Not Included in SIP Inventories)." Furthermore, as written in Chapter 3 of the SIP - *The program is not included in the PM<sub>10</sub> SIP because the use of inter-pollutant trading within the program makes tracking PM<sub>10</sub> emissions and credits problematic.*
27. See response to comment numbers 25 and 26 regarding the ERC Program.
28. The modeling domain for the attainment demonstration in this SIP was determined after extensive consultation with U. S. EPA staff. Chapter 3 pg. 3-7, section 3.3 Attainment Demonstration Area, and Appendix E pg. E-1 address this comment.
29. Chapter 4, Section 4.6.1.1 Stationary Sources, pg. 4-104 discusses the requirements for BACT and LAER at all major PM<sub>10</sub> sources and outlines BACT requirements for stationary sources with a potential to emit greater than two tons and LAER for all new or modified sources with the potential to emit 70 tons of PM<sub>10</sub>. Section 12 of the AQRs also list BACT requirements as required for all fugitive emissions generated by the permitted facility. In addition, BACT and LAER requirements for stationary sources are part of the permit process with AQD. AQD enforcement staffs are moving forward with addressing any problems concerning air quality with these facilities.

30. The emissions inventory was completed in accordance with U. S. EPA guidance. The inventory has been reviewed by U. S. EPA and quality assured by an independent contractor. Staff believes the current inventory is accurate, complete, and without bias.

Furthermore, Appendix B provides the emission inventory methodologies, emission factors, and emission estimates for all identified sources, significant and insignificant. A comprehensive list of potential sources and a discussion of those not identified within the nonattainment area is also presented in Appendix B. A list of the source categories and their designation as significant or insignificant contributors to exceedances of the annual and 24-hour standards is shown in Table 4-1. It is our position that the SIP does include a comprehensive, accurate, current inventory of actual emissions from all sources of PM<sub>10</sub> in the nonattainment area. To properly complete the modeling for the SIP, actual emissions from stationary sources during the base year and design days were used to accurately assess the impacts from these sources. Several facilities have agreed to lower emission limits and are no longer major PM<sub>10</sub> sources. These synthetic minor sources may no longer emit over 70 tons per year of PM<sub>10</sub>. Clark County staff is encouraged when stationary sources reduce their emissions as this will aid in achieving the NAAQS.

31. Actual stationary source emissions were used, as potential emissions may vary greatly from actual emissions. Accurate emission inventories cannot be developed without accurate data.
32. See response to comment number 25 and 26 regarding the ERC Program.
33. Reasonable Further Progress is addressed in Chapter 5, pg. 5-31, Section 5.6 and Appendix M (Technical Support Documentation/Appendices) of the SIP.
34. As addressed in comment 17, "There were 18 violations of the annual standard for the year 1996. The data used for the analysis and attainment demonstration was from the year's 1997 through 1999, with the base year being 1998. The emissions inventory developed for 1998 was quality assured by an independent contractor. The methodology and resulting emission inventory for a 1996 emission inventory was not reviewed by staff to determine how the most recent factors and updated methodologies used in the 1998 emission inventory would reflect in the 1996 inventory. It is possible an "apples to apples" comparison would show the attainment inventories are less than the 1996 inventory.

In addition, the control measures and SIP commitments set forth in Chapter 4, and the MSM analysis supporting these measures and commitments in Chapter 6, do provide a solid basis for attaining the PM<sub>10</sub> NAAQS. Lastly, in terms of achieving the annual PM<sub>10</sub> standard, the monitored data since 1999 has shown

attainment of the standard, and it is anticipated that by the end of 2001 the monitored data will support the attainment demonstration presented in the SIP.

35. As discussed earlier in the response to comment number 17, the data used for the analysis and attainment demonstration was from the years' 1997 through 1999, with the base year being 1998. Sources of PM<sub>10</sub> developed after the 1997 to 1999 time frame will be included in the reasonable further progress reports submitted to the U. S. EPA. Clark County has made a SIP commitment to update the SIP and implement further controls if changes in the emission inventories are significant or milestones are not met.
36. New or modified sources will be evaluated during reasonable further progress reviews. The first reasonable progress report will be completed before the end of 2001. Changes in power plants will be included in reasonable further progress reports.
37. As discussed in response to comment 3, an independent audit (QA/QC), as required by EPA guidance) of the emissions inventory was performed by Converse Consultants, Las Vegas, Nevada in August 2000 and again in April 2001 (both reports are contained in Appendix B of the SIP, dated June 2001), which established the emissions inventory accuracy. The U. S. EPA Region IX office reviewed the inventories and made no comments during the public comment period that the inventories were inaccurate.
38. ERC concerns brought forward in comments were addressed in response numbers 25 and 26 above.

As discussed in response to comment 3, and 37, an independent audit (QA/QC), as required by EPA guidance) of the emissions inventory was performed by Converse Consultants, Las Vegas, Nevada in August 2000 and again in April 2001 (both reports are contained in Appendix B of the SIP, dated June 2001), which established the emissions inventory accuracy.

39. See responses to comments 1 through 4, for the response to this comment concerning data contained and discussed in the SIP.
40. See responses to comments 1 through 4 and 17, for the response to this comment concerning emissions inventory, base year and data used in the attainment demonstration presented in the SIP.

Chapter 5 of the SIP addresses the methodology used to demonstrate attainment of the 24-Hour NAAQS for PM<sub>10</sub> through the year 2006. The methodology for developing future year inventories is described in detail in Appendix E of the SIP.

41. Detailed methodology for developing future year inventories is presented in Appendix E of the SIP. References are provided for all sources of information.



42. Chapter 4, Section 4.6.1.1 Stationary Sources, pg. 4-104, addresses this comment. Major sources of PM<sub>10</sub> are listed on page 4-106. All Stationary Sources are listed in Table B-56 and B-57. Further, specific requirements for which sources will comply with BACT and LAER are part of the permitting process. AQR Section 12, further clarifies issues regarding their permits. Permits are on file with the AQD and may be reviewed by the public during normal business hours.
43. Major utility sources are listed in Table B-56 of the SIP. Included in the table are facilities operated by Nevada Power, Saguaro Power and Nevada Cogeneration Association
44. See response to comments 1, 2, 3, 4, 16, 17 and 43. Annual emission inventories are on file with the AQD and available to the public during regular business hours.
45. An independent audit of the emissions inventory was performed by Converse Consultants, Las Vegas, Nevada in August 2000 and again in April 2001 (both reports are contained in Appendix B of the SIP, dated June 2001), which established the emissions inventory accuracy of 99.9998542 percent.
46. Proportional Rollback Modeling methodology is presented in Appendix K of the SIP.
47. Modeling used in the development of the SIP is discussed in Appendix K of the SIP. The proportional roll-back model is not a model with a specific software package developed by the U. S. EPA. The methodology has been approved by U. S. EPA Region IX and has been used in other applications.
48. The attainment demonstration is specifically for the BLM disposal portion of the nonattainment area. The focus of the network does fall within the BLM disposal area, as it is the area of greatest concern due to the concentration of the Las Vegas Valley's population and the influence of anthropogenic activities. Micro-scale inventories from the five sites discussed in this SIP are the typical type of site, and are representative of the typical conditions and sources that lead to high levels of PM<sub>10</sub> in the BLM disposal area. The NAAQS, are health based standards, and the BLM disposal area evaluated in the SIP contains the majority of the population where monitoring would be applicable and required per EPA guidance (CFR40, Part 58). Control measures described in Chapter 4 will lead to emission reductions of greater than 50 percent (Appendix L). Vehicle exhaust emissions will decline as tighter federal controls are implemented in future years. Therefore, attainment can be achieved although population and VMT are increasing.

49. As discussed throughout the SIP, and specifically discussed in the attainment demonstration analysis (Chapter 5), with the best available science and controls to date, the Las Vegas Valley will be in attainment of the annual NAAQS for PM<sub>10</sub> by December 2001. Furthermore, by end of 2006 the valley will be in attainment of the 24-hour NAAQS for PM<sub>10</sub>. In short, the analysis discussed in Chapter 5, Appendix E, K, and L support attainment of the NAAQS, in the time frame referenced.
50. As detailed in Appendix E, the SIP did not assume that all future construction would occur on vacant land. Natural desert preservation is part of the Multiple Species Habitat Plan adopted by the Clark County Board of County Commissioners. Further, the stringent regulatory program for area sources adopted by the CCHD Board of Health and included as part of this SIP demonstrates a strong political will to control air pollution.
51. CCDCP and AQD staffs have worked closely with the BLM in the development of this SIP. The CCDCP and RTC staffs have worked closely with the FHWA in the development of this SIP. Emission reports from Nellis Air Force Base and the airports under the jurisdiction of the FAA are documented in Appendix B. Furthermore, there have been numerous interactions including meetings and conference calls with Region IX EPA Air Quality Staff in the development of the SIP.
52. See response to comment 51, which is applicable to this comment. See response to comment 11 regarding conformity determinations.
53. The 1979 SIP was for the Total Suspended Particulate (TSP) standard, not the PM<sub>10</sub> standard. Because TSP is a different pollutant from PM<sub>10</sub>, provisions contained in the 1979 SIP are not applicable to a PM<sub>10</sub> SIP.
54. Clark County Staff has reviewed the criteria for an extension of attainment and the SIP meets the requirements for an extension of the attainment date for the 24-hour standard. Chapter 7 of the SIP, which is the request for the extension of the attainment date for PM<sub>10</sub> (24-hour standard), addresses the concerns expressed.
55. See response to comment 53, which is applicable to this comment.
56. See response to comments 51 and 11, which are applicable.
57. The issues of grandfathered stationary sources are addressed in Section 4.6.1.1 of the SIP. The only major stationary source of PM<sub>10</sub> without BACT for all emission units is currently under review. Stationary sources are audited and emission tests are conducted to confirm emission rates.

58. Sand and gravel operations are subject to BACT and LAER controls under AQR Section 12 in compliance with CAA Section 172(c)(5). Controls other than moisture are routinely implemented.
59. Control measures were adopted in the AQR's in June of 2000. These control measure requirements have already been implemented. Control measures, SIP commitments and the MSM analysis provides a solid basis for attaining the PM<sub>10</sub> NAAQS. Furthermore, attainment criteria and the attainment demonstration are discussed at length in the SIP document. These sound control measures and commitments contained in this SIP will be more than adequate to attain the NAAQS.
60. There are a number of different titles that would be appropriate for the SIP in addition to the one used and the one recommended by the Sierra Club. However, to change the title of the SIP at this time would only serve to create confusion. Clark County Staff will consider the recommended title for future documents.
61. Comment noted. Several key references were provided in the draft SIP and additional references were provided in the amendments to the March 2001 SIP.
62. Comment noted. Response to comments raised by the Sierra Club-National Chapter that were drafted by Resource Systems Group, Inc., were adequately responded to in Appendix P of the SIP. See response to comment 3.
63. Clark County Staff apologizes if Mr. Hall believes his comments were misrepresented or trivialized in any way. Clark County Staff had no intent to trivialize or misrepresent Mr. Hall's comments in the Appendix P summary. An independent party prepared the summary, which highlights the points that were made. All the points that were made were also contained in Mr. Hall's written comments which staff has addressed.
64. Clark County has fulfilled the public involvement responsibilities in accordance with Nevada Open Meeting Law, NRS Chapter 241 requirements. In addition, the adoption of the many commitments contained in this SIP by the Clark County Board of Commissioners demonstrates the commitment of elected officials to control air pollution in the Las Vegas Valley.
65. Pertinent reference material was included in the appendices of the SIP. Other references are readily available. If a member of the public has difficulty in obtaining reference documents they should contact Clark County Staff.
66. Comment noted. Clark County Staff reviewed statutes and regulations in addition to guidance documents during the preparation of the SIP. Efforts have been taken to ensure the SIP is legally sufficient.

67. Provisions of the 1979-TSP SIP are not applicable to the CAA planning requirements for the PM<sub>10</sub> NAAQS. Response to comment 53 provides further clarification to this comment.
68. Chapter 5, Section 5.6, Reasonable Further Progress (RFP), pg. 5-31 of the SIP contains an explanation of the requirements for RFP. Appendix K provides further clarification on how Clark County will meet RFP requirements of the CAA. The first reasonable further progress report will be completed by the end of 2001.
69. The 1997 SIP was withdrawn and there is no relationship with the present Draft 2001 SIP.
70. The Clark County Board of County Commissioners has assumed financial responsibilities for all Air Quality functions, including commitments in the SIP. The Governor of the State of Nevada designated these responsibilities to the Board of County Commissioners by letter dated June 21, 2001. On July 3, 2001 the Board of County Commissioners accepted the Governor's designation as the air pollution control agency for Clark County.
71. Clark County Air Quality Division Enforcement Staff are aggressively enforcing and monitoring compliance of AQR Sections 90 through 94, which were adopted in June 2000. As outlined in Appendix L, the ability to enforce and monitor adherence to AQRs and to monitor permit requirements will increase as AQR Enforcement Staff reach full staffing levels by the end of 2001(SIP Commitment).
72. There is no proposal to modify, change or adjust the nonattainment area boundary. Furthermore, changes to the nonattainment area boundary must be approved by the U. S. EPA through the appropriate public processes. Regarding emissions inventories; an independent audit of the emissions inventory was performed by Converse Consultants, Las Vegas, Nevada in August 2000 and again in April 2001 (both reports are contained in Appendix B of the SIP, dated June 2001), which established the emissions inventory accuracy. The ERC program was not used in the SIP and LAER is being enforced for PM<sub>10</sub> sources.
73. As discussed with response to comment 68, Chapter 5, Section 5.6, Reasonable Further Progress (RFP), pg. 5-31 of the SIP contains an explanation and demonstration for meeting the requirements of RFP. Further, Appendix M has further clarification of how Clark County will meet RFP requirements of the CAA.
74. In addition to maintaining an extensive NAAMS/SLAMS monitoring network in Hydrographic Basin 212 (the PM<sub>10</sub> nonattainment area), the Clark County NAAMS/SLAMS monitoring network includes background PM<sub>10</sub> monitors in Apex Valley (Apex), Ivanpah Valley (Jean), and Eldorado Valley (Boulder City). See response to comment 30.
75. Comment noted. Please see response to comment 54.

76. Clark County Air Quality Division Enforcement Staff are aggressively enforcing and monitoring compliance of AQR Sections 90 through 94, which were adopted in June 2000 to include other AQRs for Air Pollution Control such as Sections 12 and 58. As outlined in Appendix L, the ability to enforce and monitor adherence to AQRs and to monitor permit requirements will increase as AQR enforcement staff reach full staffing levels by the end of 2001(SIP Commitment). Provisions of the 1979-TSP SIP are not applicable to the CAA planning requirements for the PM<sub>10</sub> NAAQS.
77. The 1979 SIP was for the Total Suspended Particulate (TSP) standard, not the PM<sub>10</sub> standard. Because TSP is a different pollutant from PM<sub>10</sub>, provisions contained in the 1979 SIP are not applicable to a PM<sub>10</sub> SIP. Even though the 1979 SIP is not applicable, LAER and BACT requirements for stationary sources are required as part of permitting processes, enforced, and part of the SIP.
78. An extensive evaluation of the control measures contained in this SIP is set forth in Chapters 4 and 6.
79. The relationships between high concentrations of PM<sub>10</sub> and concentrations of minority and low-income populations are not clear. The programs implemented by this PM<sub>10</sub> SIP will benefit the health of all population groups in the Las Vegas Valley and will ensure Environmental Justice for all.



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June 19, 2001

Catherine MacDougall, Senior Planner  
Department of Comprehensive Planning  
Environmental Planning Division  
500 S. Grand Central Parkway, Suite 3012  
Las Vegas, NV 89155-1741

RE: Response to comments submitted by the Sierra Club regarding the Draft PM-10  
State Implementation Plan for Clark County

Dear Ms. MacDougall:

Thank you for the responses to our comments regarding the Draft PM-10 State Implementation Plan for Clark County ("Plan") outlined in our letter dated April 17, 2001 ("Comment Letter"). While the Clark County Department of Comprehensive Planning ("Clark County") has made some minor positive changes in response to our comments, the Plan still fails to meet important requirements of the Clean Air Act ("CAA" or "Act"), implementing regulations, and EPA guidance that are designed to further the Act's purpose of protecting the public from the harmful effects of air pollution. Our comments regarding your responses are set forth below next to the corresponding number. Any failure to comment specifically on a response made by Clark County should not be taken to indicate that the Club has withdrawn any of its original comments to the extent they are still applicable.

3. Clark County states that the monitoring network "adheres to the federal monitoring objectives and monitoring site criteria," yet the Plan fails to contain any demonstration supporting this assertion. State implementation plans ("SIPs") must "provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to . . . monitor, compile, and analyze data on ambient air quality. . . ." CAA § 110(a)(2)(B)(i) (emphasis added). The plain language of the Act clearly requires that SIP's demonstrate adherence to monitoring network requirements, which the Plan fails to do. Thus, the Plan continues to fail to provide for the establishment and operation of an appropriate monitoring network that is adequate to characterize the extent and severity of the PM-10 problem for the reasons outlined in our Comment Letter.
5. We are encouraged to see that the high-speed wind roses are being included in the Plan's analysis. However, there is an apparent contradiction between the Plan (stating that

"[m]eteorology is an important factor" in excess PM10 concentrations) and the County's response to the comment. The response states that "[t]he control measures . . . control emissions regardless of wind speed or direction." Since a major problem in the non-attainment area is wind blown dust, the control programs should have wind speed incorporated into them. Emission factors for wind erosion are very non-linear functions; the wind component is calculated as a logarithmic function, which then is input into a quadratic equation to calculate the emission factor (see for example: AP-42, Section 13.2.5). The Plan fails to account for this wind speed dependency on emissions even though it is one of the major contributors to dust loading in the non-attainment area. As the wind speed increases through various levels, certain operations must cease and dust control efforts need to increase. Above a certain wind speed, all dirt handling operations must cease and active, exposed areas must have the highest level of dust mitigation measures implemented. This type of action needs to be built into a contingency plan and should be required of any operation which generates fugitive dust.

The statement that "wind directions are generally the same over the years" is hardly a rigorous enough analysis to use in a document as important as the Plan. The use of only three years of meteorological data does not even meet minimum EPA standards for a climatological data set. A study by Landsberg & Jacobs (Landsberg, H.E. and W. C. Jacobs, 1951, Compendium of Meteorology, American Meteorological Society, Boston, MA, pp 976-992) suggested that over 10 years of meteorological data are necessary to determine frequency distribution stability. EPA found that acquiring 10 or more years of meteorological data was difficult to achieve in practice and suggested that a minimum of 5 years (EPA-450/2-78-027R, Section 9.3.1) could be used. Since a longer-term meteorological data set is available from McCarran International Airport (probably 10 years or more), it should be used in all aspects of the Plan, including both the annual and 24-hour design values.

6. Nowhere in the paragraph is the 'design value' directly questioned or even mentioned. Clark County's reply is non-responsive to this comment.
7. The County addresses using the Jean site as background in Appendix K of the Plan, stating that it was selected "in accordance with U.S. EPA criteria." Appendix K presents the Jean station as being "generally upwind" and therefore adequate to use as a background site. EPA (EPA-454/R-99-022, Section 2.2.4) requires a far more rigorous analysis which includes wind direction. The EPA document requires that measurements from background sites represent background "into the planning area only during periods when the wind is from the direction of the external source area toward the planning area." Appendix K does not show any detailed wind analyses to support the Jean site as an adequate background for use in the Plan. Before this site is accepted, a refined wind direction analysis needs to be presented. The current presentation in Appendix K does not meet EPA requirements.
8. Clark County appears to agree with our comment that all sources must be included in the emissions inventory, not just those deemed "significant." Thus, the sentence on p. 3-1 of the Plan that states "[t]he U.S. Environmental Protection Agency . . . requires all PM10

emissions sources to be included in the inventory if they contribute significantly to an annual or 24-hour violation of the National Ambient Air Quality Standard (NAAQS)" should be revised or removed.

9. In response to our comment about the omission of agricultural operations from the inventory, Clark County claims that Appendix B, p. B-4 addresses such operations, and that farming operations are not present in the nonattainment area at any measurable level. The statement in Appendix B is somewhat different: "Farming operations are not present in the nonattainment area at any level *approaching significance*." (Emphasis added). The County agrees that significance determinations are used to designate sources for control measures, not for inclusion in the emission inventory (see response to comment 8), but fails to estimate emissions from agricultural operations. Thus, Clark County's response is unsatisfactory.
10. With respect to our comment that the plan for additional emissions studies indicates that significant uncertainty remains with respect to the emissions inventory, Clark County claims that these studies are just to update current information about the emissions inventory. This presupposes that the County already has this information, which it does not. Our comment that the Plan fails to include a "comprehensive, accurate, current inventory" still applies.
11. The response to our comment 11 is nonresponsive, as it does not indicate whether Appendix C or the reports contained therein include the necessary information about vacant parcels identified in our comment.
12. The response to our comment 12 is nonresponsive, as it fails to provide legal authority for the notion that the attainment demonstration can be made for a smaller area than the nonattainment area if there are "compelling reasons to do so," fails to mention what those legally supported reasons are (as opposed to Clark County's own rationale), and fails to demonstrate that those reasons are present here. Clark County refers the Club to Appendix E, but nothing in Appendix E provides this information.
13. The original comments still stand. The Plan is using emission factors which have not been approved by EPA.
15. We continue to disagree that EPA may legally exempt so-called "de minimis" source categories from the BACM requirement for the reasons set forth in our Comment Letter. EPA's guidance allowing this does not comport with the language and purpose of the Act, nor with court decisions addressing agency authority to make de minimis exceptions.
16. Clark County still has not "conclusively" demonstrated that vehicular emissions fall below de minimis thresholds. The original comment still stands. Regardless of whether the PM2.5 standard has been fully promulgated or implemented, the County has a responsibility to its citizens to take any measures necessary to protect them from this significant health hazard.



17. Once again, Clark County has not "conclusively" demonstrated that stationary sources will remain de minimis through 2006.
19. Clark County expands upon its contention that requiring dust mitigation plans for parcels larger than 10 acres would be "economically infeasible" by claiming that (1) the requirement could result in a net increase in emissions due to soil disturbance that results from surveying the stabilized parcels (a claim unsupported by any data or modeling whatsoever; indeed, the Plan does not even provide a figure for the total amount of acreage that would be affected); and (2) the measure would be unduly costly. However, the Plan fails to estimate the measure's "cost-effectiveness," i.e., it does not estimate the cost per ton of reduced emissions. It simply estimates the total cost of compliance by landowners of \$4,815,000 for the first year, and the cost of enforcement by AQD at \$340,000 for the first year. The County is proposing to amend the Air Quality Regulations to require that large land owners with a cumulative acreage of 10,000 acres or greater of open area or vacant land be required to submit a dust mitigation plan. The Plan fails to explain why this is economically feasible for large landowners but not owners of land between 10 and 10,000 acres.
20. Clark County indicates it has revised the Plan to change the justification for rejecting upwind/downwind monitoring at construction sites as a potential BACM on the ground that it is technologically infeasible rather than "not practicable." The County claims it is technologically infeasible because it is difficult to know where to locate the monitoring array due to variable wind directions. The County claims this makes the monitoring data "unreliable." Also, Clark County claims the mobile nature of construction emissions sources such as earthmovers and graders also make it impossible to correctly locate a monitoring array at the site boundary. Given the almost complete dearth of meteorological analyses conducted as part of the Plan, it is easy to understand why the County has difficulty defining upwind/downwind concepts. In spite of this, we fail to see why the County could not require that upwind/downwind be defined based on the highest and lowest wind direction frequencies as obtained from the high wind speed roses. In addition, for very large, active sources, cross-wind monitors should be installed as well.
21. Clark County acknowledges that field research showed a 50% reduction in emissions achieved from the use of misters and sprayers on frontloaders, but still improperly refuses to evaluate this measure as potential BACM. The County's response is misleading; it appears to suggest that this measure was evaluated as potential BACM for the Plan. However, the Plan simply references this measure as something that was previously studied.
22. Clark County's statement with respect to comment 22 is nonresponsive. Significantly, the County does not deny that it is required to evaluate transportation control measures ("TCM's") as BACM for paved road dust. It rests on the assertion that some voluntary TCM's have already been implemented in Clark County. However, the fact remains that the County has improperly failed to evaluate other TCM's as potential BACM. Measures that should be evaluated include the measures listed in CAA § 108(f); any additional measures evaluated in the Maricopa County, Arizona Serious Area PM-10 Plan ("MAG

Plan”); and the measures identified on pages 7 - 26 of the Sierra Club’s December 10, 2000 comment letter regarding the Las Vegas Valley’s draft 2001-2025 Regional Transportation Plan , draft 2001-2005 Transportation Improvement Program and the Conformity Analysis pertaining to both. That letter is attached to these comments and incorporated herein by reference. Failure to evaluate these measures as potential BACM is a violation of EPA guidance, which requires the evaluation of all measures identified during the public comment period. With respect to TCM’s already in place, Clark County should consider strengthening them or making them mandatory rather than voluntary.

23. Clark County’s response to comment 23 makes clear that its rejection of measures to reduce traffic and control speed on public and private roads as a potential BACM is based on the mere assumption that the public will voluntarily comply with limits. This is not enough in itself to justify rejection of a measure as technologically infeasible, especially since the County has not investigated modes of enforcement.
27. We appreciate Clark County’s proposal to amend AQR Section 92 to prohibit the construction of unpaved parking lots. However, we note that the rule amendment must be adopted in final form before Clark County can approve the Plan for submittal to EPA.
28. Clark County’s proposal to amend AQR Section 94 pursuant to our comment is unsatisfactory. The language of proposed 94.5.4 exempts construction activities from the 100-foot plume/no visible emissions requirement where best available control measures have been implemented. Thus, the new rule is meaningless. Clark County should require both the implementation of best available control measures *and* the 100-foot plume/no visible emissions requirement. This will result in the maximum emissions reduction, and as a result, the maximum protection of public health.
29. Clark County’s response to comment 29 mischaracterizes the Plan. Nowhere in the Plan does it say that limiting the acreage that can be graded and disturbed at any one time is infeasible. The Plan simply says that “[o]pponents of this proposal suggested that in some instances, on very large projects, this requirement could force off-site hauling and stockpiling of fill dirt,” and that Clark County staff determined that issues raised with respect to this measure were “valid.” *See* p. 4-31. Saying that opponents to a measure raised what Clark County staff subjectively felt were “valid” objections to it is not the same thing as saying the measure is infeasible, which is the standard by which this and all other measures must be judged.
32. We appreciate the clarification regarding the required frequency of street-sweeping in Clark County but we note that the additional information regarding the stormwater permit that has been added to Appendix J was not included in the copy of the amended Plan provided to us. We also note that the permit requirement of urban street sweeping at a frequency of every 5 to 10 days is in conflict with the statement in the Plan that the urban streets in Clark County are swept an average of two weeks. *See* p. 4-68. Clark County needs to clarify in the Plan what the required street sweeping frequency is, and to obtain commitments from each jurisdiction to adhere to this requirement. This should not be

difficult, given that jurisdictions are apparently already subject to a street-sweeping frequency requirement under the stormwater permit.

34. Clark County's response to comment 34 is inadequate. It is not enough to simply provide a couple of examples of where control measures have been adopted in the Plan on a more limited basis. To comply with EPA guidance, the Plan must evaluate the feasibility of partial implementation with respect to each measure rejected as BACM.
35. The Plan's standard rule effectiveness default of 80 percent can no longer be supported given the Legislature's failure to authorize a smog fee increase to pay for the hiring of 15 additional enforcement personnel. The County's own analysis demonstrates that without this fee increase, it cannot afford the additional enforcement officers. And the County acknowledges that it needs these personnel to adequately enforce the new rules adopted as control measures for the PM10 SIP. In light of this significant change of circumstances, Clark County must recalculate the overall emissions reductions from the applicable control measures with a lower rule effectiveness value supported by its current enforcement resources.
36. We failed to see any additional information in either Chapter 4 or Appendix L that specifically described compliance and enforcement methods such as inspection strategies and penalty policies. We continue to believe that the Plan fails to meet the requirements of CAA § 110(a)(2)(C) and 40 C.F.R. § 51.280 for the reasons stated in comment
37. The Plan continues to fail to provide adequate assurances of personnel and funding as required by CAA § 110(a)(2)(E)(i) and 40 C.F.R. § 51.280 because it does not identify the funding sources that are available to the County, currently and in the future, to fund the projected costs of the air quality program. Moreover, the main source that Clark County was relying on to support implementation of the Plan, an increase in the smog fee, has been disapproved by the Legislature with no chance of resurrection. In short, Clark County currently does not have the resources to implement the Plan.<sup>1</sup>
39. The County's response to comment 39 mischaracterizes the resolution passed by the Clark County District Board of Health regarding contingency measures. This resolution merely says that the County will "evaluate" candidate contingency measures for "an assessment of suitability." There is no mechanism identified in the Plan by which these measures "will be automatically implemented if Clark County fails to meet the projected 2003 emissions reduction milestone," as the County claims.
40. The Plan's attainment demonstration continues to be inadequate for the reasons stated in comment 40. We specifically note that EPA has no authority under the Act to approve

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<sup>1</sup> We fail to understand why Clark County was attempting to fund implementation of the PM10 plan solely with a smog fee increase. It is unfair to place the entire burden on drivers, when the County itself claims that construction rather than motor vehicle exhaust is a significant contributor to the PM10 problem. A more appropriate source of funding would be an increase in dust control permit fees.

the attainment demonstration for the BLM Disposal Area only as opposed to the entire nonattainment area.

43. - 53. The Plan still does not include the most stringent measures that are feasible in the Las Vegas Valley for the reasons stated in our original comments 43 through 53. In particular, we note that proposed rules 92.2.1.4 and 94.5.4 do not cure the objections raised in our comments 44, 47, and 50 for the same reasons stated with respect to comment 28, above. That is, the 100-foot plume/no visible emissions requirement is meaningless because it does not apply where BMP's have been implemented. There is no guarantee that the BMP's will provide an equal level of emissions reduction; indeed, all evidence thus far is to the contrary. In addition, Clark County's response to our comment 49 is nonresponsive. We commented that the Maricopa County rules for stabilizing stockpiles are more stringent because they require either covering open storage piles or constructing wind barriers for all stockpiles, whereas the Clark County rule only requires this for certain soil types. Including stockpiles within a meaningless 100-foot plume/no visible emissions requirement does not address this objection.

54. -56. For the reasons stated above and in our original comments, we continue to disagree that the Plan meets the requirements for an extension of the attainment date for the 24-hour standard.

Please feel free to contact me at (702) 732-7750 if you have any questions regarding the above comments.

Sincerely,



Jessica Hodge





**SIERRA  
CLUB**  
FOUNDED 1892

December 10, 2000

**VIA CERTIFIED MAIL AND ELECTRONIC MAIL**

TIP/RTP Comments  
Regional Transportation Commission  
500 S. Grand Parkway, Suite 350  
Las Vegas, NV 89106

**Re: Comments on Southern Nevada TIP and RTP and Draft Conformity Analysis**

To the Regional Transportation Commission of Southern Nevada:

The Sierra Club, its Toiyabe Chapter, Southern Nevada Group and members who live, work and travel in the Clark County region submit the following preliminary comments on the draft 2001-2025 Regional Transportation Plan ("RTP"), draft 2001-2005 Transportation Improvement Program for the Las Vegas Valley ("TIP") and the draft Conformity Analysis pertaining to both the RTP and the TIP. As discussed below, the Sierra Club received notice of the RTP and TIP only after a U.S. agency official alerted us that the documents were out for public comment. The Sierra Club requests that the RTC extend the public comment period for the RTP and TIP to allow for meaningful public review.

Based on our preliminary review, the Sierra Club urges the Regional Transportation Commission of Southern Nevada ("RTC") to rescind its proposed RTP and TIP and Conformity Analysis, and to reformulate a new RTP and TIP which satisfy the environmental and socio-economic requirements of the Transportation Equity Act, 23 U.S.C. section 134 *et seq.* ("TEA-21"), the Clean Air Act, 42 U.S.C. section 7401 *et seq.* ("CAA"), the national Environmental Policy Act, 42 U.S.C. section 4321 *et seq.*, and additional, related federal laws and regulations.

Our comments include enclosures that will be presented to the RTC at the December 11, 2000 hearing. All of those enclosures are incorporated by reference into this comment letter. This letter is also being transmitted by electronic mail prior to the public hearing, pursuant to a telephone conversation with Jerry Duke of the RTC.

Our preliminary comments are divided into five categories, as follows:

- ◆ **RTC Failed to Provide for Meaningful Public Participation**
- ◆ **The RTP, TIP and Conformity Analysis Do Not Satisfy the Objectives of TEA-21**
- ◆ **The RTP, TIP and Conformity Analysis Do Not Satisfy NEPA Requirements for Cumulative Project Assessment**
- ◆ **The RTP, TIP and Conformity Analysis Fail to Account for Cancer And Other Adverse Health Risks From Toxic Air Pollutants And Fine Particulates Emitted By Highway Vehicles.**
- ◆ **The RTP, TIP and Conformity Analysis Fail to Estimate Travel Demand Properly**

**A. RTC Failed to Provide for Meaningful Public Participation**

The RTP, TIP and Conformity Analysis were adopted by RTC in significant violation of applicable requirements for public participation in the development and review of these documents. This lapse renders invalid the entire RTP-TIP/Conformity process. One of the most fundamental principles of both state and federal administrative law is the duty of government agencies to give to the public adequate notice of, and meaningful opportunities to be heard on, proposed agency actions. This duty extends not only to the proposed action itself, but to the rationale that underlies that action as well.

These principles are well-reflected in the administrative law applicable to conformity decisions on long-range transportation plans. The most direct requirement for public involvement is in the rules implementing the Clean Air Act Amendments of 1990, which mandate that public agencies – such as RTC – “establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans.” 40 CFR § 93.105(e). The rule specifically requires that these processes be consistent with the requirements of the FHWA regulations that implement the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (since readopted as TEA-21).

Under these laws, RTC has an obligation to incorporate as part of the TIP, RTP and Conformity Analysis process a “proactive public involvement process that provide[d] complete information, timely public notice, full public access to key decisions, and support[ed] early and continuing involvement of the public” in the development of those documents. 23 CFR § 450.316(b)(1). To achieve these objectives, the regulations required that RTC provide:

- ◆ timely information to citizens and interested parties about the issues and processes relevant to the RTP, TIP and Conformity Determination;
- ◆ reasonable access to technical and policy information used in the development of those documents;
- ◆ time for public comment at key decision points, including but not limited to the meeting at which the RTC board approves the RTP, TIP and Conformity Determination;
- ◆ explicit consideration and response to public input the agency received during planning development processes; and

- ◆ a summary, analysis, and report on the disposition of comments provided on draft versions of the documents.

Moreover, the regulations require that other key governmental agencies, including the state air quality agency, be consulted before conformity determinations are made. This requires circulation of draft documents and supporting materials for agency comment before formal adoption or publication of the RTP or TIP, as well as a process for responding to significant interagency comments. 40 C.F.R. §93.105(b).

Unfortunately, RTC has failed to comply with these requirements.

RTC has known for some time that the Sierra Club has a vital interest in issues relating to the RTP, TIP and Clean Air Act status of the Las Vegas Valley. The Sierra Club has been in frequent contact with the RTC on these issues over the past year. The Sierra Club requested and paid for copies of the existing RTP and TIP in early 2000. The Sierra Club requested and obtained data from RTC staff on annual average daily traffic figures for the US-95 corridor several months ago. Local media have frequently publicized the Sierra Club's efforts opposing the US-95 project and challenging the region's Clean Air Act state implementation plan.

Despite this knowledge, the sum total of the RTC's public notice for written comments on the draft RTP, TIP and Conformity determination was a small advertisement in the local newspaper. Worse yet, the RTC failed to post notice of the pending RTP, TIP and Conformity process on its internet site. Our Sierra Club staff diligently monitored the internet site to ensure timely notice of the RTP and TIP comment period. The RTP/TIP/Conformity Analysis were never announced on the site.

While the Sierra Club appreciates the RTC's belated efforts to conduct public outreach, these efforts come too late to justify cutting off public comments as of December 11, 2000. Our travel demand



expert, Ms. Caroline Rodier, was unable to complete a thorough review because of the improper time constraints in the RTC's process, as evidenced by her letter to the RTC. Our consultant Resource Systems Group, Inc. has requested data on the emissions modeling conducted to support the draft Conformity Analysis, as evidenced by their recent records request to the RTC. Because of the inadequate time for public review, they were unable to even prepare preliminary comments. The extension of time our Southern Nevada group requested would allow these experts to complete their review of the RTP/TIP documents.

Further, it appears that the RTC made significant changes to the RTP and TIP that were published after December 1, 2000. The document our legal office received is dated "December 2000." It is not clear what changes were made after the original newspaper notice was published. However, it appears that, at a minimum, the RTC must extend the public comment period to provide for 30 days of public review from the date of the latest revisions to the documents.

**B. The TIP and RTP Do Not Satisfy the Objectives of TEA-21**

TEA-21 revised and reenacted Title 23 of the U.S. Code, which governs the funding, construction and planning of highways and other major transportation facilities other than transit, and also made substantial changes to the Federal Transit Act in Title 49 of the U.S. Code. In large metropolitan areas, federal law allows the expenditure of federal transportation funds only on transportation projects that are included in transportation plans and transportation improvement programs ("TIPs") adopted by metropolitan planning organizations and incorporated into the state transportation improvement program. 23 USC §§134 and 135. RTC, as the designated metropolitan planning organization ("MPO") for the Las

Vegas metropolitan area, is required to adopt a 20-year long range transportation plan and a three-year TIP identifying the transportation projects that will qualify for federal transportation funding in this planning region.

In section 134(a)(2) of TEA-21, Congress directed MPOs to develop long range transportation plans that “accomplish” the “objective” enacted in paragraph (1):

Development of plans and programs.--To accomplish the objective stated in paragraph (1), metropolitan planning organizations designated under subsection (b), in cooperation with the State and public transit operators, shall develop transportation plans and programs for urbanized areas of the State.

The “objectives stated in paragraph (1)” are:

(1) Findings.--It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution.

These are not hortatory goals, but are described in the title of the subsection as the “general requirements” of the section. Under the terms of the Act, these requirements should be applied to guide the metropolitan planning process. These requirements were ignored by RTC as factors to be taken seriously, and were not satisfied by the RTP and TIP. The RTP and TIP do not –

- provide for the development of a surface transportation system that will improve or even maintain mobility for *all* population groups;
- foster economic growth and development in the area to the extent feasible with transportation investments;

- minimize transportation-related fuel consumption; and
- minimize air pollution.

Quantitative evidence has recently become available indicating that transportation plan and program scenarios other than the highway-oriented ones adopted by most MPOs could much more closely approach these statutory objectives by investing substantially more in transit and transit-oriented development. Evidence from Portland, Denver and other western cities indicate that combined land use and transit investments can reduce VMT by as much as 17% compared to freeway-oriented sprawl development scenarios. These strategies also produce comparable reductions in fuel consumption and air pollution, in addition to enhanced mobility. They foster economic development by reducing the costs of travel and reducing the public and private costs of regional development.

The Sierra Club is submitting with these comments a technical report prepared by researchers from the University of California, Davis on the relative efficacy of non-highway projects in reducing congestion and air pollution. The report, "Studies On The Travel And Air Quality Effects Of Transit, Land Use Intensification, And Auto Pricing Policies," reviews the empirical literature and modeling studies pertaining to transportation projects nationwide and internationally. The report reaches the conclusions set forth below.

First, transit investments accompanied by land use intensification policies, with and without auto pricing policies, may be more effective than highway investment in reducing congestion. For example, the simulation study in the Sacramento, California, region indicated that vehicle hours of delay could be reduced by 13.3% for the transit alternative with land use measures and auto pricing policies compared to 5.2% for the highway alternative (Johnston et al., 2000). The simulation study in the Portland, Oregon,

region indicated that vehicle hours of delay could be reduced by 65.9% in the transit investment alternative with land use measures only compared to 43% for the highway alternatives (CSI, 1996).

Note that the Sacramento and Portland simulation studies are particularly relevant because they use advanced travel demand models (relative to typical regional modeling practice). The results of these studies are limited to their regions but they are suggestive of results that might be obtained by other regions that employ state-of-the-practice models and seriously evaluate transit alternatives to proposed highway alternatives.

Second, the results of this report suggest that evaluation criteria that includes only measures of congestion (e.g., vehicle hours of delay, level of service, or auto travel speeds) may bias planning in favor of the highway alternative. Even with congestion on some roadway facilities, the transit alternative may improve overall regional accessibility (i.e., travel time and cost for all modes of travel) compared to the roadway alternative. In the Sacramento simulation study, we found that although the highway alternative provided relatively large congestion reduction, it actually reduced regional accessibility (measured as net economic benefits) when the unobserved cost of additional auto travel was included in the analysis (i.e., total vehicle operating costs rather than just the perceived vehicle operating costs represented in the travel demand model). All the transit scenarios, however, improved regional accessibility.

Third, the evidence reviewed for this report suggests that highway alternatives will increase VMT and vehicle emissions and that the transit alternative will decrease VMT and emissions, relative to a no build alternative. For example, the Sacramento simulation study found that the transit alternatives reduced VMT and emissions from approximately 0.2% to 8.8% and that the highway alternative increased VMT and emission from approximately 1.3% to 3%. The Portland study found that the transit alternatives would

decrease VMT by 0.4% to 6.4% and NOx by 2.6% to 8.4% and that the highway alternative would increase VMT by 1.6% and NOx by 6.7%.

The conclusions of this report strongly suggest that a transportation improvement program should (1) include transit investment alternatives accompanied by supportive land use and auto pricing policies, (2) simulate the travel and emissions effects of transit alternatives as well as the highway alternatives using state-of-the-practice travel demand and emissions models, and (3) use regional accessibility evaluation criteria rather than congestion criteria.

The Sierra Club believes that numerous strategies are available that promote the optimal accomplishment of the four objectives defined by TEA-21. The most important and most effective of these is a general commitment to serve mobility demand with expanded transit and other shared-ride services rather than increased highway capacity. But in addition to this broad policy direction, there are numerous specific strategies that support transit-oriented system development. Some of these strategies include land use options, and others are emissions control measures that help reduce motor vehicle emissions. Taken together, there is a large and highly effective array of options that support the adoption of regional plans designed to optimize the four planning objectives.

A candidate list of reasonably available strategies that could be adopted as part of regional plans in almost all cities might include:

1. Commuter Choice Programs facilitated by TEA-21 tax law changes: parking cash out programs where employers offer employees added taxable income in lieu of parking, (e.g. \$2-3/day instead of a free parking space); tax credit and other incentives for employer subsidies of transit fares and van pool programs; and tax incentives for employee purchase of transit and van benefits;

2. Discounted pre-paid transit fare instruments designed for effective Commuter Choice promotion (e.g. \$65/month regional passes), reduced transit fares and fare free zones, regional transit fare integration;
3. Accelerated bicycle and pedestrian improvements and bicycle/pedestrian access to transit;
4. Land use transportation control strategies: large scale in-fill redevelopment with TDM and encouraging accessory apartment development in transit oriented neighborhood and centers;
5. Replace diesel fleet vehicles with Compressed Natural Gas, hybrid, or electric vehicles to reduce high-risk toxic emissions and improve the attractiveness of bus travel;
6. Transit priority treatment and improved traveler information services;
7. Value pricing and road and parking pricing incentives and traveler information services;
8. Transit and paratransit service expansion (e.g., to achieve a targeted increase in person trips by transit and paratransit);

#### **Selected Strategies Reasonably Available Everywhere --Commuter Choice.**

**Background.** For the vast majority of working Americans, a free parking space at work has for decades been the sole commuter benefit offered by employers. If you drive alone to work you gain the benefit. If you take transit, carpool, walk, or bike, you lose the benefit and likely pay your own daily transit fare. With this kind of incentive, its no surprise that on any given day nine out of ten American commuters drive to work (Hu and Young, 1992) and nine out of ten of the cars driven to work have one occupant (Pisarski, 1996). Yet the 85 million "free" or subsidized employer parking spaces actually cost American business

\$36 billion per year (Association for Commuter Transportation, 1996). By spurring more driving, these subsidies exacerbate traffic congestion and air pollution.

**1998 Federal Tax Code Change Makes Commuter Choice Reasonably Available Across America.**

New federal tax law changes make Commuter Choice incentive strategies universally available as potential Transportation Control Measures to meet Clean Air Act requirements in areas that fail to meet the National Ambient Air Quality Standards to protect public health. The 1998 Federal Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) gives new incentives to reward employees and employers who help reduce traffic and pollution problems. The Commuter Choice provisions in TEA-21, Section 9010, modify the Internal Revenue Code and enable employers to offer employees options for qualified transportation fringe benefits. There are three principal Commuter Choice options: (1) Employees can purchase up to \$65 dollars per month in transit benefits using pre-tax income (an amount that increases to \$100 in 2002) which slashes the effective cost of transit. (2) Employers can offer tax-free subsidies for their employees' transit costs, with the same limits. And (3) employers can now offer cash in lieu of parking -- "cashing-out" old inflexible parking subsidies.

**Emission Reduction Benefits.** The most effective Commuter Choice option is the parking cash-out incentive, which helps reduce use of single passenger motor vehicles for those who have the alternative of carpooling, telework, bicycling, walking, or using public transportation. A study of California companies offering this new cash-out option found that one out of eight employees who formerly drove to work chose to leave their car at home so they could instead take a raise in pay (Donald Shoup, 'Evaluating the Effects of Cashing Out Employer-Paid Parking,' *Transport Policy*, Vol. 4, No. 4, Oct. 1997, pp. 201-216.). The share of commuters diverted from solo driving by a cash out option was highest in urban centers with good

transit options and lower in suburban fringe areas where transit is not available or very limited and where even carpooling is harder to arrange.

The other Commuter Choice options are employer-paid transit benefits and employee purchase of transit or vanpool benefits using pre-tax dollars. Both of these reduce the cost of using public transportation or vanpools where these are available. EPA recently made estimates of the emissions benefits of the Transitchek program in New York, a transit subsidy program targeting commuters that takes advantage of this federal law change. EPA estimated reductions of about 85 Tons/Yr. VOCs, 73 TPY NO<sub>x</sub>, and 615 TPY CO in 1999. In correspondence with staff of the Senate Environment and Public Works Committee in 1999, the EPA Office of Mobile Sources estimated that a national commuter choice program assuming a 5-10% employee participation rate would generate:

- A reduction in commute VMT of 1.6 to 3.2%
- Reductions in VMT of 10,000,000,000 to 20,000,000,000 miles
- Emission Reductions of...
- HC: 27,000-54,000 short tons
- CO: 240,000-480,000 short tons
- NO<sub>x</sub>: 16,800-33,600 short tons
- CO<sub>2</sub> 1,180,000- 2,360,000 metric tons

**Effects on Employee/Employer Costs.** The savings for employees offered by the federal tax law changes are significant and make a high level of employer and employee participation in the next several years realistic. For example, an employee earning \$50,000 per year who spends \$1,000 annually on transit could realize a tax savings of \$420 as a result of paying their transit cost using pre-tax dollars, exercising



one of the new Commuter Choice options, while their employer would gain payroll tax savings (at 7.65%) of \$76 per employee (Arthur Andersen). Even if the cost to set up and administer the program equals 2% of the transit benefit, the employer will still enjoy payroll savings of \$56. Employers are likely to face new costs to offer transit passes or added cash income in lieu of parking, but these can also translate into substantial cost savings of several types. It is much cheaper for an employer to boost non-taxable employee benefits than to offer added taxable income to retain or attract workers, which is an increasing issue in a tight labor market. If the employer is able to expand employment without adding more parking spaces or to otherwise avoid the cost of building, leasing, or maintaining parking spaces for workers, capital cost savings can amount to \$5,000 to \$20,000 per avoided space and operating costs can amount to \$750 to \$3,000 or more per year per avoided space. Such savings are often significant enough to more than pay for a cash in lieu of parking or transit pass benefit.

**State Commuter Choice Incentives.** Several states and local governments have offered added transit tax credits, including Washington, New Jersey, and Georgia. Maryland has adopted the largest tax credit; a 50 percent state tax credit for employers who provide transit and van benefits, cash-in-lieu-of-parking incentives, or guaranteed ride home programs, a credit that is worth up to \$30 a month per employee. Some governments, like Connecticut and Montgomery County, Maryland, sell discounted transit passes to employers, matching employer contributions dollar for dollar, to stretch federal and state tax benefits even farther. Several years ago California adopted a law requiring large employers who lease parking spaces to offer employees added cash income in lieu of parking, but implementation of the law was impeded until recently when conflicting federal tax laws which had worked against cash-out programs were changed.

**Broad Support for Commuter Choice Incentives.** Commuter Choice programs have been shown to unite the diverse interests of environmentalists, business, labor and transit and highway advocates. Most realize that Commuter Choice is good for business and for communities. Commuter Choice is a voluntary incentive that boosts travel options and supports more efficient use of the roads and transit we already have. It can provide quick relief to traffic-strained communities and will expand market opportunities for new forms of access to suburban jobs. Low- and moderate-income workers benefit particularly, since commuting costs represent a larger relative burden on them, and they tend to be more reliant on ridesharing and transit. The Alliance for Clean Air and Transportation, a new national group representing a diverse array of sectors, including the road builders, automobile industry, environmentalist and health groups, the American Association of State Highway and Transportation Officials, the National Association of Regional Councils, and the US DOT and EPA, in February 2000 adopted a consensus goal of making Commuter Choice benefit programs a standard part of the American worker benefit program over the next five years.

**The Need to Go Beyond Marketing and Generalized Expressions of Support.** Commuter Choice will reduce air pollution and traffic congestion only if people know about it and use it, and if the opportunities for cost savings offered by aggressive implementation of these incentives are made evident and available to developers, building owners and tenants, and commuters. Marketing alone has been shown to be inadequate to win widespread adoption of Commuter Choice incentives. Mandates for employers to meet pre-established requirements to reduce employee commuting car trips have evoked resentment and resistance from some businesses. But there are many other strategies that can be taken by states, regional bodies, and local municipalities that can foster rapid and widespread adoption of Commuter Choice incentives so these might become available to the average commuter. Additional financial incentives and

support by transportation agencies and other government bodies are essential to rapid adoption of Commuter Choice voluntary incentives and can be highly cost-effective in reducing congestion and pollution.

**Commitments for Commuter Choice.** The measures below are a reasonably available set of steps that municipal, regional, and state agencies can take to assure that potential VMT-reduction, transit ridership improvement, and air pollution reduction benefits from Commuter Choice will be realized in a timely manner. Non-attainment areas could also include the following reasonably available elements as part of their State Implementation Plans (SIPs) which must be developed to attain national health standards for air pollution:

- (1) Municipal and state agencies within the Transportation Management Area (TMA) and/or non-attainment area should adopt written commitments that they will provide public leadership by offering Commuter Choice options to their own workforce on a rapid implementation timetable, including management, administrative, and budget commitments to make this possible, and
- (2) Municipal and state agencies within the TMA/non-attainment area should adopt written commitments that they will aggressively promote Commuter Choice options to employers and commuters in their region with marketing, technical and administrative assistance, new transit fare products, and new financial incentives for employers and employees that are adjusted annually in an effort to meet stated performance targets.
- (3) The RTP, TIP and/or SIP should include targets and timetables for (a) providing different segments of the labor force with Commuter Choice options of various types and (b) achieving increased levels of use of various Commuter Choice incentives by various portions of the labor force. For example, a

Metropolitan Planning Organization (MPO) plan and/or SIP could identify the following model targets, which could be used as the basis for estimating optimal planning objectives and/or SIP credits if accompanied by commitments to reasonably linked funding and policy commitments that could be anticipated to meet these targets:

| Illustrative Target for Share of Employees or Employers Who Are Offered Opportunity to: |  |  |  |
|---|--|--|--|
| Public Sector Employees in Region   | To Purchase Pre-Tax Transit/Van Benefits | Receive Employer-Paid Transit/Van Benefits | Receive Added Cash Income in Lieu of Parking at Work |
| 1 <sup>st</sup> year  | 50%                                      | 50%  | 10%  |
| 2 <sup>nd</sup> year  | 100%                                     | 75%  | 25%  |
| 3 <sup>rd</sup> year  | 100%                                     | 100%                                       | 50%  |
| 4 <sup>th</sup> year  | 100%                                     | 100%                                       | 75%  |
| 5 <sup>th</sup> year  | 100%                                     | 100%                                       | 100%   |

| Illustrative Target for Share of Employees or Employers Who Are Offered Opportunity to: |                                       |  |  |
|---|---------------------------------------|--|--|
| Private Sector Employees in Region  | Purchase Pre-Tax Transit/Van Benefits | Receive Employer-Paid Transit/Van Benefits | Receive Added Cash Income in Lieu of Parking at Work |
| 1 <sup>st</sup> year  | 25%                                   | 10%  | 5%   |

|                      |     |     |     |
|----------------------|-----|-----|-----|
| 2 <sup>nd</sup> year | 50% | 25% | 10% |
| 3 <sup>rd</sup> year | 75% | 50% | 20% |
| 4 <sup>th</sup> year | 85% | 65% | 40% |
| 5 <sup>th</sup> year | 90% | 75% | 60% |

| Illustrative Target Share of Employees Offered Opportunity for Benefit Who Use It: |  |   |  |
|--|--|---|--|
|  | Purchase Pre-Tax<br>Transit/Van Benefits | Receive Employer-<br>Paid Transit/Van<br>Benefits | Receive Added Cash<br>Income in Lieu of<br>Parking at Work |
| 1 <sup>st</sup> year   | 20%                                      | 10%   | 10%  |
| 2 <sup>nd</sup> year   | 20%                                      | 15%   | 15%  |
| 3 <sup>rd</sup> year   | 20%                                      | 15%   | 15%  |
| 4 <sup>th</sup> year   | 20%                                      | 20%   | 20%  |
| 5 <sup>th</sup> year   | 20%                                      | 25%   | 25%  |

(4) Municipal, regional, and state agencies within MPO planning region and/or the non-attainment area should identify for priority funding in the RTP and TIP Commuter Choice promotion initiatives and related incentives. This should include funding for:

- (a) transit, rideshare, and alternative commute program marketing, paid advertising, and transportation management associations,

- (b) development of new pre-paid discount transit fare instruments and seamless regional transit fare and service coordination designed to facilitate easy marketing (e.g., introducing a new unlimited use \$65/month regional transit pass that can be purchased by or through employers),
- (c) promotion of pre-paid employer-subsidized transit fare instruments to both employers and employees,
- (d) transit fare buy-down programs that match employer contributions towards employee transit commute benefits with public sector subsidies (e.g., the Montgomery County, MD, Fair Share program) or tax credits (e.g., the Maryland or Washington State Tax Credits for employers who pay for transit benefits or who offer cash in lieu of parking payments)

(5) Municipalities should agree to incorporate incentives for adoption and use of Commuter Choice incentives by employees, employers, and developers through additional flexibility in the application of zoning parking requirements, in requiring that leases and property transactions separately identify the cost of parking spaces and offer options for reduced parking in exchange for covenants and agreements to incorporate cash in lieu of parking and employer paid transit benefits in building leases and other real estate transactions. Municipalities should agree to require Commuter Choice strategies to be considered in traffic planning, site plan and development review decisions, zoning and parking ordinance revisions, access-to-jobs programs and local tax policy.

**b. Accelerate Investments in Pedestrian and Bicycle Improvements.**

**Background.** Transportation agencies have begun to program more bicycle and pedestrian transportation improvements in recent years, making these reasonably available in all metropolitan areas. A

large share of these projects offer transportation and related air quality benefits by giving travelers expanded travel choices for short and medium length trips within communities and for access to public transportation. Projects that restore or improve walking and biking connections between neighborhoods to schools, for example, may significantly reduce 'serve passenger' trips made by parents to drop or pick up their kids at school. Projects that overcome natural or man-made barriers to safe and comfortable bicycle and walk travel to shopping centers, park-and-ride lots, transit stations, employment centers, or recreational areas may significantly reduce motor vehicle use for access to these activities. Especially when combined with improved transit, expanded financial incentives for use of alternatives, land use and urban design strategies that reduce trip lengths and automobile dependence, and social marketing efforts, investments in pedestrian and bicycle facilities can have a major impact on the number of motor vehicle trips in an area, and typically somewhat lesser impacts on vehicle miles of travel.

**Emission Reduction Benefits.** The reduction of emissions stemming from improved pedestrian and bicycle is often disproportionately higher than the accompanying reduction in motor vehicle trips and vehicle miles of travel. This is because motor vehicle emissions per mile traveled are highest when engines are cold. Regional travel demand models are usually poorly suited to characterizing the nature, attributes, barriers and potential for non-motorized travel modes. The often inadequate and poor quality local data on walking and bicycling has frequently lead to gross mis-estimation of the potential for non-motorized modes to play a role in travel and even greater misestimates of their potential to reduce air pollution. When well integrated into a community and regional transportation demand management system, bicycle and pedestrian improvements usually have a potential to multiply the effectiveness of other strategies to reduce

motor vehicle trips and emissions by enhancing access to public transportation, influencing travelers to choose closer destinations instead of more distant ones, and enhancing the livability and attractiveness of existing communities, supporting infill development, and boosting travel choice.

**Commitments for Pedestrian and Bicycle Improvement TCMs.** At the very small level of expenditures on bicycle and pedestrian improvements, there can be little hope of making very much of the region pedestrian and bicycle friendly or to have an appreciable effect on travel demand, mobility, fuel consumption and emissions from these projects. It is a reasonably available measure to accelerate the rate of project programming and funding commitments for bicycle and pedestrian projects, for example by building out an RTP bicycle and pedestrian program in a period of three to five years. Funds for this might be found by slipping slightly the timetable for buildout of some other projects in the TIP and RTP that can be expected to increase emissions and thereby delay timely attainment of healthful air quality.

A bicycle and pedestrian commitment might also include funding of a program for community-based bicycle and pedestrian planning and improvements. In a very large share of communities there is significant unmet demand for the retrofit of sidewalks, for pedestrian traffic safety improvements, for enhanced connections of neighborhoods to schools, and for better pedestrian and bicycle access to public transportation. A commitment to fund planning and public involvement to identify, design solutions, and address local needs such as these is a critical part of assuring effective additional efforts in this arena beyond the accelerated funding of TIP and RTP bicycle and pedestrian projects. Because of the difficulty of estimating emission reduction benefits related to many small scale projects, it is important for the all emissions analyses to aggregate these into a performance-oriented package. In other words, the RTP and



TIP should set realistic but ambitious mode share objectives and trip reduction objectives related to improving bicycle and pedestrian friendliness of particular areas, fund travel monitoring and planning to evaluate the effectiveness of the overall effort, and not waste time evaluating each individual component of the non-motorized travel investment and service enhancement effort. As the overall package is implemented, the investments, plans, and policies should be actively evaluated together and resources allocations and policies should be refined in response to experience.

### **c. Large and Small Scale Transit-Oriented In-fill Redevelopment with Demand Management**

**Background.** There is a growing consensus among land development and real estate experts that some of the best emerging opportunities for market-responsive growth of new housing and employment are in infill redevelopment in existing communities, including urban and inner suburban areas that have been in decline in recent decades. (see for example, Roxanna Guilford, 'Experts say inner cities will boom in 21<sup>st</sup> century,' *Atlanta Business Chronicle*, May 7, 1999) Steps are being taken by some regions to facilitate this shift in development focus. For example, Portland, Oregon, Newark, New Jersey, and Atlanta, Georgia are all taking steps in various phases of progress, towards renewal of brownfields and older neighborhoods.

**Emission Reduction Benefits.** There is substantial evidence that significant air quality benefits can be achieved by modifying land development patterns to limit urban sprawl and facilitate transit use. A recent EPA-funded report concludes that careful land use planning can reduce vehicle trip lengths and promote shifts to transit, bicycling and walking modes. EPA, Office of Mobile Sources, *Background*

*Information for Land Use SIP Policy*, Final Report, Contract No. 68-C7-0051 (9/30/98)(available on EPA, OMS web site, and appended to our prior comments as Exhibit D). For example, the report cites studies showing that development at infill sites can result in vehicle NOx emissions that are 27% to 42% lower than at more dispersed locations. *Id.* at 5. The report identifies specific strategies to achieve such results, including planning that promotes transit-oriented development, density transfers, and design elements that encourage pedestrian, bike, transit and ridesharing activity (e.g., narrower streets, sidewalks, bike lanes, traffic calming devices). *Id.* at 10-11. The report further identifies a number of cities throughout the nation where such strategies have been adopted and included in air quality plans. *Id.* at 20-33. For example, the maintenance SIP for Portland, Oregon identifies several land use TCMs, including an urban growth boundary, requirements for transit-oriented development, and a regional parking policy. *Id.* at 24-25. The 1994 Sacramento, CA., ozone SIP contains land use-related TCMs, including a requirement that new developments include mitigation measures to achieve a 15% reduction in vehicle emissions. *Id.* at 22-23. The San Francisco clean air plan includes land use planning measures, and programs to promote pedestrian travel and traffic calming. *Id.* at 21-22. The EPA report also identifies a number of other land use TCMs that have been adopted in other cities, although not yet included in clean air plans. *Id.* at 26-30. All of the above-referenced strategies are within the arena of potential RACM that must be considered by the states. See 42 U.S.C. 7408(f)(1)(A)(xiv).

The Atlanta region recently won approval from EPA for a TCM which is composed of a projected 6 million square foot mixed use infill brownfield redevelopment on a 135-acre parcel, together with a regionally significant highway bridge across an interstate road that is needed for site access, and a comprehensive transportation demand management and transit service package for the site and nearby area.

This project qualified as a TCM because it was possible to demonstrate that the package of measures, investments, and development would contribute to reduced regional vehicle miles of travel by locating more jobs and housing close to the regional center with appropriate services and incentives.

**Commitments for Land Use Strategies.** The RTC should engage in planning that encourages pilot projects that build upon these models for land use strategies and/or TCMs with comprehensive travel demand management, transit services, and appropriate incentives, building on the precedent set by the Atlantic Steel project in Atlanta, which recently qualified as a SIP TCM. In Atlanta, this 135-acre brownfield redevelopment site in Midtown Atlanta required major transportation investment in the form of a highway bridge across I-75/I-85 to connect it to a MARTA metro station and provide needed access for a 6 million square foot mixed use development. The Atlantic Steel project could only proceed if this transportation project was bundled with added transit investments and services, the in-fill redevelopment project and appropriate urban design guidelines, and supportive transportation demand management to assure that it would reduce total motor vehicle trips and travel in the region. US EPA helped the Atlanta region with technical modeling assistance that helped demonstrate the emission benefits. This innovative packaging of strategies allowed the transportation investments to move forward despite a transportation conformity lapse in metropolitan Atlanta that blocked other new highway funding approvals.

A smaller scale land use strategy would be geared to removing zoning, permitting, building, parking, and site design code barriers that now impede adaptive reuse of existing buildings for accessory apartments, neighborhood serving retail, and environmentally appropriate home-based business uses in residential areas. Many local jurisdictions now prohibit accessory apartments or make it difficult to provide

affordable 'granny flats' in existing single-family homes in transit-oriented neighborhoods close to employment centers. One reasonably available land use strategy would facilitate such conversions with code changes, technical assistance and financing, for example to help empty nesters age in place while repopulating older neighborhoods back to their historic population levels. By helping more working families live close to jobs, this would cut vehicle miles of travel, congestion and pollution. The RTP, TIP and/or SIP could establish targets for creating new housing units in place in existing transit served neighborhoods, for example, for accessory units to provide for a 1% increase in the number of total housing units per year in zones that are within walking distance of designated 'smart growth' centers or within walking distance of transit operating at least once every 15 minutes.

**d. Diesel Fleet (Bus, Vans, Municipal vehicles) Phase-out and Replacement.**

**Background.** An air pollution control measure that has been implemented in an increasing number of areas around the nation is the phase-out of diesel buses and fleet vehicles on an accelerated schedule and replacing them with new buses and fleet vehicles powered by substantially cleaner fuels, such as natural gas or stored electric power. Although this strategy primarily serves the objective of minimizing air emissions, it can also enhance the attractiveness of buses as an alternative to driving, reduce exposure of people to hazardous air pollutants, and reduce consumption of fuels that contribute most to greenhouse gas emissions and dependence on foreign energy sources.

**Emission Reduction Benefits.** Studies show that in-use emissions of NO<sub>x</sub> and VOCs by natural gas buses are about one-third those of diesel buses. Natural Resources Defense Council, *Exhausted by Diesel, How America's Dependence on Diesel Engines Threatens Our Health*, Ch. 6 at 1-2 (1998)(available at:

[www.nrdc.org/nrdc/nrdcpro/ebd/chap6.html](http://www.nrdc.org/nrdc/nrdcpro/ebd/chap6.html)). See also T.C. Coburn, B.K. Bailey, and K.J. Kelly, National Renewable Energy Laboratory, Results from Federal Emissions Tests on Alternative Fuel Vehicles and their Implications for the Environment and Public Health. A just released report by the National Association of State and Local Air Quality Officials looking at the health impact of particulates concludes that up to 125,000 Americans may contract cancer as a result truck, bus and other diesel engine emissions. Numerous businesses and bus systems around the nation are now using CNG vehicles, and thus it is clearly an established technology. NRDC Report at 3-10. For all these reasons, and given the substantial number of diesel fleet vehicles operating in most regions, a diesel conversion program is clearly a RACM that must be considered for inclusion in the SIP.

**Commitments for Diesel Bus Replacement.** Although the issue cost of purchasing alternative fuel vehicles is higher than conventional diesel fuel buses, clean fuel buses are a wise investment in the long run. Diesel buses cost 30 to 50 thousand dollars more than standard diesel buses. Natural gas costs average 15 to 40% less than gasoline or diesel and the engines require less maintenance so you get a long term operating cost benefit. The greatest benefit it offers is the reduction of harmful smog to our health. Over its expected lifetime a CNG bus will save approximately 190 thousand gallons of diesel fuel, also decreasing dependency on petroleum. A city in California recently became the first public agency in U.S. to park a fleet of diesel buses and switch overnight to a fleet of 100% natural gas, reporting few difficulties in making the transition due to extensive training of staff for the change. A commitment for diesel bus replacement should identify the timetable for bus replacement, the age of buses being replaced, and adequate funding resources for the replacement.

The examples above of alternative transportation investments are illustrative and far from inclusive of the full range of opportunities available to reduce traffic growth, air pollution, and environmental injustice through alternatives to conventional highway system expansion. But each of these strategies is nearly universally available and relevant for consideration in the transportation planning and transportation project environmental review process.

### **C. The TIP and RTP Fail to Satisfy NEPA Requirements for Cumulative Project Assessment**

The essential elements of the National Environmental Policy Act, 42 U.S.C. section 4321 et seq. ("NEPA") are 1) identification of the purpose and need for a proposed project or program, 2) an assessment of a project's or program's significant impacts on the human environment, including its contribution to the cumulative impacts of multiple projects in a limited geographic area, 3) consideration of alternatives when significant impacts are expected, 4) identification of mitigation measures to eliminate or minimize significant impacts, and 5) a public process for review of need, impacts, alternatives and mitigation options. These are elements of decision-making under NEPA that we believe apply to the development of multiple transportation projects in a metropolitan area. They are currently not elements usually considered in the metropolitan planning process. Instead, they are most typically considered as part of each project review under NEPA. This approach requires the implementing agencies with little responsibility for making regional, systems level decision, to evaluate the cumulative environmental and other impacts of multiple projects in a region. It also empowers the implementing agencies to second-guess, and then effectively veto, the regional choices made by an MPO by rejecting those regional choices as options to be considered in the EIS process under NEPA.

The current process therefore requires overlap and duplication by requiring implementing agencies to reconsider regional impacts and alternatives that may have been considered by the MPO, and also to undermine the authority to make regional systems decisions granted to MPOs by TEA-21. Comprehensive planning review of alternatives by MPOs would provide an opportunity to remedy these defects in the current program.

Currently, the NEPA process is typically applied, if not exclusively, to individual highway and transit projects. In almost all cases, the only impacts reviewed are at the corridor level. As a result, most of the impacts of the transportation system we are most concerned about, e.g., loss of wild lands and farmland to regional development, regional air pollution, energy consumption and greenhouse gas emissions, are ignored. The cumulative impact of multiple project decisions on mobility, access for the transit-dependent, public and private costs, and large scale environmental impacts are not addressed. The current NEPA process is not serving the major interests and objectives outlined above, nor is it supporting the development and consideration of alternative plans that can approach the statutory objectives of TEA-21.

The failure of the transportation planning process and the NEPA process to address these impacts is the legal Achilles' heel of project development under current law. NEPA challenges to highway projects have begun to raise the lack of cumulative impact analysis as a basis for stopping projects. See, e.g., the 1997 decision of the 9<sup>th</sup> Circuit court of appeals in which a highway EIS was remanded when the EIS failed to catalogue past projects and discuss the cumulative impacts of past, present, and expected future projects in the area. The Court held that the agency did not meet its burden to fully explain the cumulative impacts. *Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142 (9<sup>th</sup> Cir. 1997). To address this requirement of NEPA, the implementing agencies, including UDOT and FHWA, must either advance the NEPA

consideration of cumulative and regional impacts and alternatives into the RTC planning process, or consider those impacts separate from the planning process in which those decisions are made by MPOs.

The approach the Sierra Club suggests involves more than integrating NEPA into the planning process to satisfy the need under NEPA to identify an individual project's purpose and need. We request that RTC address the requirement that the NEPA process address cumulative regional impacts, and address alternatives to the current regional planning approach that provides the assumptions used to support findings of project-level purpose and need.

If the NEPA process is to meaningfully address regional and cumulative impacts, it should be integrated into the planning process when the decisions about regional system choices are being made. For NEPA to be integrated into the planning process, regional planning must then consider alternatives on a regional scale. NEPA, then, links back to the requirement for accomplishing the four planning objectives under TEA-21 above. When NEPA requires an assessment of alternatives, one of the issues always is what alternatives must be considered besides the proposed project and the no-build alternative. TEA-21 provides an answer: to the extent Congress defined the "objective" of the planning process, then it also defined the parameters of at least one planning scenario that must be considered, or in NEPA terms one of the alternatives to the projects proposed in the region, i.e., a fiscally constrained scenario that optimizes each of the four statutory planning objectives.

The Sierra Club asks that all regional project impacts, including social, economic, equity and energy impacts of projects that are required to be evaluated under 23 USC § 109(h) and the Civil Rights Act, should be included in an integrated regional analysis that is exposed to public scrutiny through the NEPA review process. We understand that a comprehensive assessment of the environmental, social,



economic, equity and energy impacts of highway projects would include both the regional and corridor-level impacts that adversely affect such important values as—

- human health;
- interests protected under Title VI of the Civil Rights Act;
- protection of open space and wildlife habitat, with special emphasis on preservation of critical habitat for endangered and threatened species;
- preventing global warming; and
- the four values identified as “objectives” of the transportation planning process: mobility, economic growth, minimizing air pollution and fuel consumption.

The Sierra Club is concerned about a number of environmental and other impacts that are not adequately addressed by the current NEPA practice of limiting the review to corridor impacts and individual project alternatives, including the failure to fully describe the relationship between project-level reviews and related regional analyses performed as part of the planning process, and the failure to consider the cumulative impacts of multiple projects in a region on important environmental, social and economic values when those impacts are not fully addressed as part of the planning process, and the failure to clarify the scope of alternatives that must be considered at the regional level either as part of the planning process or an assessment of cumulative impacts as part of project-level assessments.

These concerns are raised generally, but also in the context of specific examples of adverse impacts that are reasonably anticipated to result from the approval of major highway capacity-expanding projects. We take this approach for three reasons: 1) we believe these issues are of major public concern and deserve the attention of RTC's board before RTC no longer has an opportunity to remedy these deficiencies in the

current process, 2) these issues are already being raised or will be raised in the near future with regard to specific planned or proposed highway projects in the region, and 3) we believe final action on the TIP, RTP Update and Conformity Analysis should specifically anticipate how the MPO and implementing agencies will address these issues.

**D. The RTP and TIP Fail to Account for Cancer And Other Adverse Health Risks From Toxic Air Pollutants And Fine Particles Emitted By Highway Vehicles.**

This issue is presented in response to recent evidence showing that people living in communities located near heavily traveled highway facilities are being exposed to concentrations of toxic and hazardous air pollutants emitted by motor vehicles that cause an extremely high and unacceptable risk of cancer, and other respiratory and cardiovascular disease. The Sierra Club has raised this issue in connection with the planned expansion of US-95 in northwest Las Vegas.

The most compelling evidence is presented in a research report released in March 2000 by the South Coast Air Quality Management District in California that demonstrates both measured and modeled regional exposures to toxic air pollutants across a large portion of the Los Angeles air basin. The study demonstrates that toxic pollutants emitted by motor vehicles measured at eight sites accounts for an unacceptably high cancer risk in the range of 1 in 1,000 exposed individuals to 1 in 700. See, *Multiple Air Toxics Exposure Study-II (MATES-II)*, March 2000, [enclosed]. The study found that the total cancer risk in the L.A. Basin from toxic air pollutants measured at these 8 monitoring sites ranges from 1,100 in 1 million (or 1 in 900) to 1,700 in 1 million (or 1 in 670), and that 90% of the total cancer risk is attributable to toxic air pollutants emitted by mobile sources. Id. ES-3, ES-5. Most of the mobile source cancer risk is associated with exposure to the toxic pollutants benzene, 1,3 butadiene, formaldehyde and diesel

particulate matter ("DPM"). The concentrations measured at these eight sites appears not to measure the actual high exposure site since the Compton monitoring site measured the highest concentrations of other mobile source-related toxic pollutants, but DPM was not measured at that site. If DPM concentrations at that site are proportionally higher compared to other sites in the study in the same ratio as benzene, 1,3 butadiene and formaldehyde, the actual peak cancer risk would likely exceed 1 in 500 exposed persons.

In addition, concentrations of toxic pollutants estimated by a regional air quality model show that neighborhood exposures near heavily traveled highways is significantly higher than exposures monitored at the regional monitoring stations, producing a cancer risk as high as 1 in 130 (5800 in 1 million) in some receptor areas. *Id.*, Fig. 5-3a, p.5-11. These estimates may be conservative since the concentrations estimated by the model in receptor areas where monitoring stations measured actual concentrations showed that the model in almost all cases underpredicted the measured concentrations.

In addition, other research provides evidence of increased incidence of other adverse health outcomes for residents of neighborhoods near heavily traveled highways. Brunekreef and colleagues (1997) show that adverse health outcomes including premature mortality and increased morbidity through increased respiratory and cardiovascular effects are associated with the increase in ambient fine particulate matter, e.g., particles less than 2.5 microns in diameter ("PM<sub>2.5</sub>") from roadway sources.

Taken together, this evidence requires that a comprehensive risk assessment be performed to determine the health risks for neighborhoods located near heavily traveled roadways that are proposed to be built or expanded in densely populated portions of the metropolitan area, and that alternatives to the development of high cancer risk travel corridors be chosen as the preferred alternative or that mitigation be

adopted to prevent the incremental health risk attributable to toxic air pollutants emitted from these projects.

### **Approximating Pollutant Exposures Outside The Los Angeles Basin.**

The *MATES-II* study demonstrates that the modeling tools are available to perform risk assessments to estimate cancer risk attributable to motor vehicle emissions on a regional scale, and traditional EPA-approved line models are available to assess the incremental risks for populations living in close proximity to highway sources of air toxic emissions.

It is reasonable to use the *MATES-II* results as a screening tool to identify the travel corridors outside the Los Angeles basin where unacceptably high cancer risks are likely. These results are relevant to estimating exposure to toxic air pollutants for populations outside of the Los Angeles basin when population densities and vehicle trips are comparable to those observed in heavily traveled highway corridors in the Los Angeles basin. Exposures to toxic air pollutants by residents living near heavily traveled highways outside of the Los Angeles basin can be reasonably estimated by comparing with the concentrations measured and/or modeled near roadways with similar traffic levels in Los Angeles. Residents located near heavily traveled highway corridors with comparable heavy traffic in other urbanized areas should experience exposures to mobile source toxic air pollutants at least as high as those reported in Los Angeles. Emissions from highways with comparable heavy traffic in the other 49 states would be expected to be higher than those observed in California because emissions of DPM and toxic VOC species are lower for both diesel and gasoline-fueled vehicles that are subject to California emissions standards and

that burn fuels meeting California fuel standards. Therefore, it is reasonable to estimate that exposures to mobile source toxic pollutants for residents near highways with heavy traffic will likely be higher than those reported in *MATES-II*, but for screening purposes can reasonably be assumed to experience exposures at least as high as those reported in Los Angeles.

For residents located immediately adjacent to heavily traveled highways, cancer risks will be significantly greater than those reported for the eight regional monitoring stations in *MATES-II*. The higher modeled peak concentrations are more likely to approximate exposures for nearby residents. Standard line models used to estimate concentrations of criteria pollutants emitted by motor vehicles on highways generally show that concentrations at the right-of-way are ten times higher than concentrations 300 meters away from the right-of-way. Thus exposures for families living closest to heavily traveled highways may be substantially greater than the concentrations measured at regional monitoring stations reported in *MATES-II*.

#### **The Significance of Health Risks.**

These high cancer risks for nearby residents, and even higher risks for those living adjacent to roadways, far exceed the risk levels adopted by EPA and Congress in setting national health standards, and are unacceptable to the residents of these neighborhoods. EPA has summarized the consensus cancer risk policy of federal agencies as requiring careful assessment of cancer risks in situations where the population risk is greater than 1 in 1 million.

Where the entire U.S. population is exposed to a chemical classified as a probable human carcinogen, the agency consensus appears to be that risks less than 1 in 1 million generally can be found acceptable without consideration of other factors while risks greater than that level require further analysis as to their acceptability.

56 Fed. Reg. 7757 (February 25, 1991). On the other hand, EPA and other federal agencies have generally acted to reduce cancer risks greater than 1 in 10,000. *Id.* Here, the cancer risk for those living near heavily traveled highways is at least 1 in 1,000 to 1 in 650.

Except for diesel particulate, these risk estimates are derived from well-established risk factors that have been the subject of intensive scrutiny for many years. Although the *MATES-II* cancer risks are derived from risk factors adopted by the California environmental agencies, those factors do not differ significantly from those reported by EPA. See *Integrated Risk Information System* (EPA, Cincinnati, OH)[<http://www.epa.gov/iris>]. In addition, these risk estimates are not for the maximally exposed individual living adjacent to heavily traveled highway corridors, but rather for regional populations. Nearby neighborhood exposures are substantially higher, and may be as much as an order of magnitude higher for the maximally exposed individuals.

With regard to diesel particulate, the cancer risks in *MATES-II* are estimated based on unit risk factors adopted by California, but not yet by EPA. "The current EPA position is that diesel exhaust is a likely human lung carcinogen and that this cancer hazard exists for occupational and environmental levels of exposure." 65 FR 35,446 (June 2, 2000). This characterization of DPM as a carcinogen is supported by the National Institute for Occupational Safety and Health (NIOSH), the International Agency for Research on Cancer, and the World Health Organization (WHO). *Id.* The National Toxicology Program at NEIHS on May 15, 2000, also listed diesel particulate as a "known human carcinogen." Although a risk factor for DPM has not yet been adopted by a federal agency, more than enough data has been accumulated from numerous epidemiological studies to allow a risk factor to be determined for risk assessment purposes.

It is also clear that this issue, or the need to assess health risks in heavily traveled corridors will not be resolved by regulatory action proposed by EPA. EPA's current proposed diesel rule anticipates that "selected air toxics chosen for analysis are expected to decline by the same percentage amount as hydrocarbon exhaust emissions." 65 FR 35,460. EPA estimates that heavy duty vehicles "account for about 3 percent of national VOC and 8 percent from mobile sources in 2007." 65 FR 35,458. Total VOC reductions expected from the rule, as shown in Table II.D-3, are about 230,000 t/yr from a 2007 HDV inventory of approximately 430,000 t/yr. While a significant reduction in total HDV emissions, this 55% reduction of air toxic emissions from HDV will reduce total vehicle emissions of air toxics by about 4.5% between now and 2020. This reduction in total highway vehicle emissions is an important step but will not significantly reduce cancer risk in heavily traveled highway corridors.

In addition to cancer risks, the increased mortality and other adverse health effects attributable to fine particle exposures currently measured in these corridors raise additional questions about the public health price we are asking citizens to pay as a result of increased highway capacity. DOT has recently estimated the adverse health effects attributable to highway vehicle emissions, including increased premature deaths and other serious respiratory and cardiovascular diseases, to cost the American public in excess of \$40 to \$64 billion/year, depending on whether a premature death is valued at \$2.7 million or \$4.8 million. See Table 9, *Addendum to the 1997 Federal Highway Cost Allocation Study Final Report*, U.S. Department of Transportation, Federal Highway Administration (May 2000).

**Table 9. Estimated Economic Costs of Motor Vehicle-Related Air Pollution in 2000<sup>1</sup>**

| Pollutant   | Impact                 | Costs of Rural                               | Costs of Urban                               | Costs of All                                 |
|---|------------------------|--|--|--|
|   |                        | Motor Vehicle<br>Travel<br>\$1990 (millions) | Motor Vehicle<br>Travel<br>\$1990 (millions) | Motor Vehicle<br>Travel<br>\$1990 (millions) |
| Particulate Matter                                      | Mortality <sup>2</sup> | 12,695                                       | 21,558                                       | 31,162                                       |
| Particulate Matter                                      | Non-fatal Illness      | 3,683  | 6,232  | 9,183  |
| Sulfur dioxide,<br>nitrogen dioxide,<br>carbon monoxide | Non-fatal Illness      | 0  | 51   | 51   |
| Ozone   | Non-fatal Illness      | 28   | 16   | 47 <sup>3</sup>                              |
| <b>Total</b>  |                        | <b>16,406</b>                                | <b>27,857</b>                                | <b>40,443<sup>4</sup></b>                    |

<sup>1</sup>Costs for "criteria" pollutants only (does not include toxic pollutant costs). Excludes certain health-related costs and costs of reduced visibility, crop damage, and material damage not quantified by EPA.

<sup>2</sup>Mortality costs based on DOT's \$2.7 million estimated cost of a premature death.

<sup>3</sup> Does not include ozone mortality costs, which are highly uncertain.

<sup>4</sup> Comparable estimate using EPA's value of life is \$64,681.

Source: Abt Associates, 1998, pages 9-11.



As noted in the cost study, these costs do not include the health effects caused by air toxic emissions from highway vehicles discussed above. A disproportionately high portion of the adverse health effects associated with these costs, as well as the costs themselves, will be experienced by nearby communities and not the larger community as a whole. These risks become doubly troubling if the residents who are most affected are the least empowered among us, and the least able to move or take other actions to defend themselves from the adverse health risks of motor vehicle pollution.

Therefore, the Sierra Club believes that this evidence of --

- significant risk of adverse health effects from current exposures to regional concentrations of motor vehicle pollution;
- the large incremental risk for citizens living in close proximity to heavily traveled roadways, and
- the increased exposure and corresponding health risk that can be expected if increased capacity contributes to increased mobile source emissions in these corridors;

requires analysis and the adoption of non-polluting transportation alternatives and/or development of mitigation measures under NEPA, 23 U.S.C. § 109, and Title VI of the Civil Rights Act before any action may be taken to approve highway projects that cause or contribute to cancer risks in excess of acceptable risk levels, premature mortality from various cardio-pulmonary diseases, and the increased incidence and severity of the morbidity effects of exposures to emissions from motor vehicles.

#### **Legal Authority Requiring Assessment of Health Risks.**

NEPA, section 109(h) of title 23, DOT's current regulations implementing these statutory requirements in 23 CFR Part 771, and applicable judicial precedents require that an agency consider the

adverse public health effects of air pollution associated with the construction of a highway. See *Lathan v. Volpe*, 350 F Supp 262 (WD WA 1972); *Keith v. Volpe*, 352 F Supp 1324, 1335 (CD CA 1972); see also 40 CFR § 1508.8; 40 CFR 1502.16. To the extent that the objectives of TEA-21 also require that transportation plans "minimize air pollution," this issue is also relevant to the development of regional plans and TIPs. The proposed TIP, the RTP and the Conformity Analysis do not address this health risk, and the current project review process does not provide clear direction regarding the stage of the process when these effects will be addressed, how or whether regional alternatives will be considered in the process, and whether mitigation will be required if alternatives are not selected.

#### **National Environmental Protection Act (NEPA)**

It is well settled that an EIS must be performed for any federally funded activity that will or may have a significant impact on the human environment. Agencies and courts generally require an EIS when evidence "show[s] that the proposed project would materially degrade any aspect of environmental quality." See *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202 (E.D. Cal.1999). Courts do not need to find that the action will have significant effects – only that the action may cause significant effects. Where there are substantial questions as to whether the project will create a significant impact, it is not reasonable for an agency not to do an EIS.

It has long been recognized that air pollution associated with highways has a significant impact on the human environment. In the context of air pollution, a brief or conclusory discussion of impacts is insufficient to satisfy the mandates of NEPA. See *I-291 Why? Ass'n v. Burns*, 517 F.2d 1077, 1080 (2nd Cir. 1975). One court noted that an incomplete or limited evaluation of the air pollution created by a highway expansion is egregious because "automobile emission was responsible for approximately 50% of

the air pollution throughout the country . . . ." See *Keith v. Volpe*, 352 F Supp 1324, 1334 (CD CA 1972). Therefore, where evidence shows that toxic and hazardous air pollutants emitted by mobile sources cause a significant risk to public health, a full EIS examining the extent to which each project will add to existing adverse health effects by allowing increased exposure to hazardous and toxic air pollutants emitted by mobile sources is required to reveal the true public health risks associated with the expansion of major highways.

### **23 U.S.C. § 109(a) and (h).**

In addition to NEPA, federal highway law, 23 USC §109(a), requires consideration of the adverse effects of air pollution prior to approval of the plans and specifications for a highway, and section 109(h) requires measures that "eliminate or minimize" the adverse effects of "air pollution".

In a case challenging DOT's approval of a highway project without assessing its impact on air pollution, the court in *D.C. Federation of Civic Associations v. Volpe*, 459 F.2d 1231 (D.C. Cir. 1971), held that 23 U.S.C. § 109(a) required such an analysis:

We can find no basis in the statute's language or purpose for the conclusion that certain hazards are, as a matter of law, immaterial to the Secretary's evaluation of a project's safety. The District Court would surely agree that Congress did not intend to permit construction of a bridge in a situation, however rare, where air pollution would be a significant threat to safety. It does not follow, of course, that air pollution will be a significant hazard in all-or even any-highway projects. And the District Court apparently concluded that no extraordinary dangers are likely to arise from the Three Sisters Bridge. Still, the gathering and evaluation of evidence on potential pollution hazards is the responsibility of the Secretary of Transportation, and he undertook no study of the problem.

DOT's approval of the highway bridge was remanded.

Federal highway law goes beyond NEPA by requiring that the decision to approve a highway be made in the best overall public interest taking into consideration the need for fast, safe and efficient

transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following: (1) air, noise, and water pollution; (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services; (3) adverse employment effects, and tax and property value losses; (4) injurious displacement of people, businesses and farms; and (5) disruption of desirable community and regional growth. Such guidelines shall apply to all proposed projects with respect to which plans, specifications, and estimates are approved by the Secretary after the issuance of such guidelines." 23 USC §109(h). At a minimum, this provision requires DOT to determine the costs of eliminating or minimizing the adverse health effects attributable to air pollution, and then requiring mitigation in the "best overall public interest."

DOT's 1987 regulations implementing this requirement and NEPA provide that the analyses required by §109(a) and (h) are to be performed as part of the NEPA review of the project. 23 CFR Part 771. DOT's recently proposed NEPA rules continue to adopt this integrated approach. Thus because both §109(a) and (h) require an analysis of the adverse effects of air pollution and the costs of eliminating or minimizing such effects, an EIS would be required for the large regional highway projects listed above. Projects recently addressed by an EIS would need to have supplemental EISs prepared to address major public health issues such as the cancer risk impact not considered in the original EIS.

Section 109(h) also requires DOT to "eliminate or minimize" the adverse effects attributable to a new or expanded highway. This provision is implemented through DOT regulations in 23 CFR §771.105, but has not been applied by FHWA with regard to the adverse health effects associated with toxic and hazardous air pollutants emitted from highway projects. The current DOT regulation adopts as --

the policy of the [Federal Highway] Administration that:

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(d) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

On its face, paragraph (d) requires that measures necessary to mitigate the adverse health effects of hazardous air pollutants be incorporated into the plans and specifications for the project. Subparagraphs (1) and (2) then establish criteria for determining whether the costs of mitigation are eligible for federal funding. But the rule does not appear to contemplate the approval of a project that would have significant adverse effects on human health without requiring that those effects be mitigated. This requires that the project either include measures to eliminate long-term human exposure to the levels of hazardous air contaminants that are associated with significant risks of adverse health effects, or that alternatives be developed that can prevent these adverse health effects.

#### **Title VI Of The Civil Rights Act And Related Guidance.**

Causing adverse health effects such as increased incidence of cancer, increased premature death and other serious diseases to populations near heavily traveled highway corridors also takes on a discriminatory character when these impacts are imposed disparately on low income, ethnic or racial minorities.

Title VI and its regulations prohibit recipients of federal funds from engaging in intentional discrimination on the basis of race, color or national origin, as well as unjustified adverse disparate impact discrimination for which there are less discriminatory alternatives. Title VI provides that "[n]o person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. DOT has promulgated regulations that bar disparate impact discrimination by recipients of federal funds to effectuate the provisions of Title VI. See 42 U.S.C. § 2000d-1, 49 C.F.R. § 21.5(b)(2). Accord, Memorandum from Attorney General Janet Reno to Heads of Departments and Agencies that Provide Federal Financial Assistance, Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964 (July 14, 1994).

The President's Order on Environmental Justice requires each federal agency, including FHWA, to make achieving environmental justice part of its mission. Exec. Order 12,898 (Feb. 11, 1994). DOT and FHWA have in turn promulgated orders to implement the President's Order. DOT Order on Environmental Justice (DOT Order 5610.2) (April 15, 1997); FHWA Actions To Address Environmental Justice in Minority Populations and Low Income Populations 6640.23 (Dec. 2, 1998). These orders affirm the principle of using the planning process to implement Title VI, related civil rights statutes, and the federal environmental laws to avoid intentional and adverse disparate impact discrimination. DOT recently issued Guidance to MPOs confirming that these criteria are to be applied in reviewing transportation plans and

#### TIPs:

While Title VI and [environmental justice] concerns have most often been raised during project development, it is important to recognize that the law applies equally to the processes and products of planning. The appropriate time for FTA and FHWA to ensure compliance with Title VI is during the planning certification reviews conducted from Transportation Management Areas

(TMAs) and through the statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP).

*See FHWA and Federal Transit Administration ("FTA"), Memorandum re: Implementing Title VI Requirements in Metropolitan and Statewide Planning (Oct. 7, 1999) at 2.*

A valid disparate impact claim under Title VI has three main components. First, an action by an agency that receives federal funding has a disparate adverse impact based on race, ethnicity or national origin. The disparities may be demonstrated through statistical evidence, numerical disparities or anecdotal evidence. Second, any action that has such a disparate impact must be justified by business necessity. Third, even if the action would otherwise be justified by business necessity, the action may be prohibited if there are less discriminatory alternatives to accomplish the same end. A disparate impact claim does not require proof of intentional discrimination. *See United States Department of Justice, Civil Rights Division, Title VI Legal Manual (Sept. 1998) ("DOJ Title VI Legal Manual") at 53-59 and cases cited.*

The federal environmental laws are an integral part of the transportation equity framework. The civil rights laws require equal justice for all under the environmental laws as well as the transportation laws. The environmental laws can also provide substantive standards for assessing intentional and disparate impact discrimination claims. *See, e.g., Transportation Equity Act for the 21<sup>st</sup> Century ("TEA-21") (codified in titles 23, 49 and scattered sections of title 42, U.S.C.); Clean Air Act, 42 U.S.C. § 7401 et seq. as amended; National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4234; and the environmental review requirements for highway projects in 23 U.S.C. § 109(h).* Thus, for example, an action that will add air pollution and have an adverse disparate health impact against low income, ethnic or communities of color would not be justified by business necessity and might in some cases also depart from substantive

clean air standards in violation of both the Clean Air Act and Title VI. A number of less discriminatory alternatives might be readily available – such as compliance with Clean Air Act standards in cases where standards apply, or in cases where standards do not apply, taking actions that avoid the increased pollution such as providing mobility with non-polluting alternative modes, or protecting communities from the harmful exposures by creating protective buffer zones.

Disparate impacts of motor vehicle pollution on communities is a concern brought into focus by a growing body of evidence that neighborhoods located in close proximity to large numbers of motor vehicles are exposed to substantially higher concentrations of primary fine particles and hazardous air pollutants known to cause cancer and cause or exacerbate other serious adverse health effects including asthma, cardiovascular and lung disease. Unlike secondary pollutants such as ozone that are formed in the atmosphere and cause regionally dispersed exposures, primary pollutants are most concentrated at the source. Populations living near sources of motor vehicle emissions such as highways and interchanges are exposed to substantially greater concentrations of the vehicle pollutants that endanger public health. The motor vehicle pollutants of particular concern include fine particles smaller than 2.5 micrometers in size, and the carcinogens benzene, 1,3 butadiene, formaldehyde, and numerous components of diesel particulate matter.

The Sierra Club is concerned about the adverse health effects of exposure to these pollutants by all residents; low income and middle class alike. Children are especially at risk from all of these effects, including a greater likelihood of suffering from childhood diseases. But this concern focuses most on the residents of neighborhoods adjacent to the major Interstate and other heavily traveled highway corridors. Because residents living near such heavily traveled traffic corridors are at risk of experiencing substantially



increased incidence of cancers, premature mortality, more frequent hospitalizations for respiratory and cardiovascular disease, more frequent asthma attacks requiring medical attention, greater use of medications and increased costs of medical care, prescriptions and loss of income from lost work time, they request that an EIS be prepared for each such project.

An appropriate consideration of alternatives under NEPA necessarily should include an evaluation of the extent to which reallocation to transit of the funds allocated to these highway projects could contribute significantly to reducing travel demand, VMT and diesel-fueled vehicles thereby reducing resulting emissions of toxic air pollutants. An analysis of the health and other benefits to be obtained from an optimal transit investment strategy would best be undertaken at the planning stage. But if such an analysis is not performed by RTC, such analysis must be performed by the implementing agencies before any project EIS is approved.

DOT's October 1999 Guidance to MPOs regarding the implementation of Title VI of the Civil Rights Act requires that disparate impacts, including the burdens of transportation investment decisions, be assessed as part of the MPO planning process. To the extent that an MPO fails to perform such an analysis, or a regional analysis reveals disparate health impacts on low income, racial or ethnic minorities that are not consistent with the requirements of Title VI, then such inaction or analysis needs to be considered by DOT as a basis for not approving an MPO's plan and TIP.

**The TIP and RTP Do NOT Include an Analysis Showing That This Issue has been Addressed.**

The RTC RTP and TIP include a number of new or expanded highway projects where heavy traffic levels are expected in areas where human populations reside within 300 meters of the right of way, and therefore may reasonably be expected to cause or contribute to cancer in nearby communities. In many of

these corridors, the associated toxic or hazardous air pollutants emitted by mobile sources already are creating a cancer risk far above the levels that would trigger an assessment to consider the need for mitigation measures to protect public health. Proposed new capacity in both new and existing highway corridors, and expected increases in daily vehicle trips that would occur in and be promoted by such new capacity, will significantly increase the unacceptably high cancer risks to populations exposed to hazardous air pollutants in these corridors. These high cancer risks trigger an obligation under NEPA and § 109(h) of the federal highway code to assess the magnitude of these risks to regional populations, to residents living nearby and to families living immediately adjacent to these highway facilities, to identify mitigation measures, and to require the implementation of measures necessary to "eliminate or minimize" the adverse effects of air pollution attributable to the project.

These projects have not been analyzed for their contribution to emissions of hazardous air pollutants, either as part of the planning process, the NEPA process or as part of the scoping and design of the projects. Neither the plans, specifications and estimates nor a project agreement may be lawfully approved under 23 U.S.C. § 106(a) until the adverse effects on public health attributable to the emissions of hazardous air pollutants from mobile sources in these corridors are assessed, and alternatives necessary to prevent those adverse effects are selected as the preferred alternative or mitigation is required as part of the project approval.

The current planning and NEPA processes do not provide a context for evaluating the full scope of alternatives that could protect the public from these cancer risks. Project-level review of individual highway projects do not provide the appropriate scale for consideration of alternatives that would include land use, transit-oriented development and regional expansion of transit services as strategies for reducing

overall travel demand or SOV use, or fleet conversions or fuel modifications that could significantly reduce regional emissions of diesel particulate and other hazardous air pollutants.

At the same time, the planning process conducted by RTC, and certainly as required by DOT's current planning regulations, do not require that health risks attributable to the emissions of toxic air pollutants from mobile sources be considered at all, nor do they consider regional alternatives that could reduce VMT and emissions of air toxics.

TEA-21 imposes on MPOs responsible for the planning process an obligation to consider and adopt plans that minimize air pollution and transportation related fuel consumption. That obligation necessarily includes consideration of strategies that will achieve that objective, and should therefore include an evaluation of the health impacts attributable to motor vehicle emissions on a regional scale and consideration of regional alternatives most likely to meet that objective. If a regional scale impact analysis is not undertaken by regional planning agencies, there is no assurance that the implementing agencies will provide for regional scale analysis of impacts, alternatives or mitigation measures such as buffer zones around major travel corridors. If such a regional scale analysis were undertaken by UDOT or FHWA outside the planning process, there is also no mechanism to ensure that regional alternatives will be implemented as part of the regional plan and TIP.

To remedy these deficiencies in current practice, we ask RTC, or as necessary, DOT to require that all projects above a threshold likely to contribute to exposures that would be associated with cancer risks greater than 1 in 1 million be subject to a risk assessment to characterize the local exposures and provide reliable information to local residents of their expected cancer risk. The risk assessment should be included in a regional plan that also serves as an EIS that considers the range of regional and corridor-level

alternatives that could reduce travel demand or SOV use, and mitigation measures that would ensure effective separation of human populations from areas likely to be contaminated with unacceptably high concentrations of carcinogens and other contaminants known to threaten human health.

**E. The TIP and Conformity Analysis Fail to Estimate Travel Demand Properly**

The Clean Air Act and its regulations require that travel demand modeling accurately project vehicle miles traveled (VMT). The quantity of emissions emitted by mobile sources depends primarily on total VMT. RTC's continuing failure to quantify VMT accurately results in the underestimation of emissions, and renders the Conformity Analysis invalid.

As the RTC should know, the U.S. Environmental Protection Agency, the Sierra Club and other groups have criticized the RTC's travel demand model in conjunction with the Final Environmental Impact Statement ("FEIS") for the US-95 expansion. U.S. EPA harshly criticized the US-95 FEIS for failing to account for "induced travel" in its traffic projections. A failure to account for induced travel means underestimating the additional traffic demand caused by expanding the roadway network. The Sierra Club raised this issue to the Federal Highway Administration in connection with the US-95 FEIS. We pointed out the fact that the recent expansion of the US-95 "Spaghetti Bowl" interchange has resulted in additional vehicle travel through the interchange which wildly exceeds all past projections.

Ms. Caroline Rodier from the University of California, Davis has submitted a preliminary review critiquing the RTC's modeling of travel demand in the RTP and TIP. The Sierra Club incorporates Ms. Rodier's report by reference into this comment letter.

**Conclusion**

For all of the reasons stated above, the The Sierra Club, its Toiyabe Chapter, Southern Nevada Group and members who live, work and travel in the Las Vegas Valley urge the RTC to provide more time for meaningful public review of the RTP, TIP and Conformity Analysis. Based on our preliminary review, the Sierra Club urges the RTC to rescind its proposed RTP, TIP and Conformity Analysis, and to reformulate a new RTP and TIP which provide for a sustainable transportation system and ensure protection of the environment and public health. If you have any questions regarding this correspondence, please contact me at 415.977.5709 or by e-mail at [pat.gallagher@sierraclub.org](mailto:pat.gallagher@sierraclub.org).

Sincerely,

P/G

Patrick Gallagher  
Senior Attorney

Responses to comments received in letter from Jessica Hodge, Southern Nevada Group of the Sierra Club, dated June 19, 2001

The Sierra Club letter dated June 19, 2001 was delivered to the Clark County Comprehensive Planning office after the close of the public hearing and adoption of the PM<sub>10</sub> State Implementation Plan by the Clark County Board of Commissioners at its regularly scheduled meeting on June 19, 2001. In the interest of public participation, however, we determined it appropriate to include the letter in the document and to provide responses to the comments submitted. The following responses are numbered to correspond to the numbered comments in the Sierra Club letter.

3. Section 2.2 of the SIP addresses the air quality monitoring network. This Section states that the Clark County Health District Air Quality Division (AQD) operates the monitoring network, and provides reference to the particulate monitoring network plan submitted to the U.S. EPA in November 1998 addressing the entire particulate monitoring network pursuant to Section 58.20 of the 1990 CAAA. As noted, the AQD submitted network review reports to the U.S. EPA in July and November 1999, and in July 2000 published a report updating the particulate matter monitoring network description, and documenting the implementation of the PM<sub>2.5</sub> network design. The referenced reports document that the network complies with U.S. EPA siting and operational criteria. The reports are on file and available for review at the Clark County Health District. Additionally, the AQD has in place an U.S. EPA approved Quality Assurance Manual, dated October 31, 2000. Thus the SIP does satisfy the monitoring network requirements of the CAAA Section 110(a)(2)(B)(i).
  
5. Control measure development and implementation are addressed in Chapter 4 of the SIP. Although, where appropriate, wind speed curtailment requirements are incorporated into the adopted control measures, the control measures are not wind speed or wind direction dependent nor are they required to be. The control measures (e.g. road paving) will achieve the predicted control efficiency regardless of wind speed, unless otherwise noted and curtailments have been put into place.

Section 3.2 addresses the nonattainment area inventories and the meteorological data used in their development. The base year and 24-hour emission inventories were developed for the design year and design day which were determined using EPA guidelines as described in Appendix A. The design year is 1998, the design day is December 21, 1998, and the representative meteorological data collected at McCarran Airport during the design year and on the design day were used to develop the applicable emission inventories. For the micro-scale inventories, meteorological data from each of the monitoring sites for the design day were used except for one station where meteorological data was not available. For that day at that site, McCarran airport data was

used. Use of actual meteorological data from the site during the time period of the study lends greater accuracy to the inventories and modeling. The emission inventory calculations are described in detail in Appendix B and Appendix D.

6. The initial comment #6 in the April 17, 2001 Sierra Club letter stated that "it was not clear which meteorological data were used" and "that Section 3.4.1 implies that 1998 meteorological data were used for the emissions inventory". Our initial response referred to the specific U.S. EPA guidelines (SIP Guideline, EPA-450-2-86-001) used to determine the average annual design value and the 24-hour design value. The design value selection established the meteorological data to be used in developing the nonattainment area emission inventories. As noted in the response to comment 5 above, and per U.S. EPA guidance, the meteorological data from McCarran Airport for the design year (1998) and the design day (December 21, 1998) were utilized in the emission inventory calculations. Site and date specific data were used when available for the micro-scale inventories for each given design day.
7. The Jean background site was designated a SLAMS (State and Local Air Monitoring Station) site for background monitoring purposes by the U.S. EPA in 1994. It has been operating as a part of the approved monitoring network since October 1994, with the monitoring objective of determining general background concentration levels. In accordance with EPA's PM<sub>10</sub> Guideline Document, EPA-452/R-93-008, dated April 1993, Section 5.1, the SIP itself does not have to contain the SLAMS network description. The network description, as noted in the response to comment 3 above, is available at the Clark County Health District Air Quality Division. As shown by the wind roses in Chapter 2, wind patterns have not changed since 1994 and the Jean site is still a background site.
8. As indicated in our response to the initial in the April 17, 2001 Sierra Club comment on this text, Clark County utilized a more rigorous approach to preparing the emission inventory than the "significant contribution" criteria set forth in the Addendum to the General Preamble. The SIP includes a comprehensive, accurate, and current inventory of actual emissions from all sources of PM<sub>10</sub> in the nonattainment area. Emission inventory methodologies, emission factors, and emission estimates for all identified sources, significant and insignificant, are detailed in Appendix B. A comprehensive list of potential sources and a discussion of those not identified within the nonattainment area is also presented in Appendix B. The text revisions requested by the Sierra Club have not been made due to the importance of the "significant source" concept in structuring of the emission inventory to facilitate control measure analysis.

9. Clark County is not aware of any measurable agricultural activity contributing to emissions in the Las Vegas Valley nor has the Sierra Club provided any information on this activity. This is addressed in Appendix B, Page B-4.
10. As set forth in Chapter 3 and Appendix B, the SIP does contain an accurate and current inventory. Many of the sources that contribute PM<sub>10</sub> concentrations in the Las Vegas Valley are dynamic in terms of activity levels. As Clark County grows, activity levels will change. Our commitment is to conduct future studies to ensure that projected activity levels (and the corresponding emissions) are in line with projected emissions.
11. Disturbed vacant land is perhaps the most dynamic of all the emissions sources contributing to violations of the PM<sub>10</sub> NAAQS. The location of disturbed parcels and the degree of disturbance change over time. The reports contained in Appendix C document the methods used and fieldwork conducted to identify and classify vacant lands, and to establish valley-wide PM<sub>10</sub> emissions from vacant lands. Maps and parcels evaluated are provided in the UNLV reports. Development of a static "list" of disturbed vacant land as requested in the initial Sierra Club comment would quickly become outdated and would not enhance the assessment of contributions to the ambient PM<sub>10</sub> concentrations from this source category or the development of control measures for this source category.
12. Clark County intended that the response to the Sierra Club comment 12 of the April 17, 2001 Sierra Club letter was responsive. Clark County is not claiming that it is acceptable for the attainment demonstration to be made for a smaller area than the nonattainment area. Rather, Clark County has conducted analysis of smaller, relevant areas that are actually causing violations of the NAAQS within the nonattainment area in order to provide an attainment demonstration that is adequately conservative for the whole nonattainment area. That is, the analysis is for a smaller area, but the attainment demonstration works for the whole area.

In choosing a modeling domain, one should consider wind patterns, source locations, monitor and receptor locations (Guideline for Regulatory Application of the Urban Airshed Model, EPA-450/4-91-013, July 1991). Here "receptor location" means important places, such as population centers. This implies, and it is common in practice, that the domain need not coincide with the nonattainment area. Domains can be larger, but also can be smaller so that limited resources (inventory work, modeling input work, computer time) can be focussed on the relevant areas. The key criteria is that the domain includes the key sources of emissions that affect high monitors and population areas. As detailed in our previous response,



the Clark County attainment demonstration conclusively meets this criteria.

Another factor in setting the modeling domain boundary is that one should strive to put the boundary so that phenomena at the boundary have little effect on the center of the domain. In the Guideline on Air Quality Models (40 CFR 51, App. W), section 9.3 and in the PM<sub>10</sub> SIP Development Guideline (EPA-450/2-86-001, June 1987), Appendix D, and also in the Receptor Model Technical Series, Volume I, Overview of Receptor Model Application to Particulate Source Apportionment, EPA-450-4-81-016a, July 1981 p. 27, it is stated that background concentrations are to account for sources not explicitly modeled. The Clark County modeling domain boundary is consistent with the concept that the edges of the domain should be areas with low emissions density and that have little effect on the places of concern (i.e., locations with high monitored values). Sources in the outlying areas are effectively accounted for by including the background concentrations in the modeling computations. This Clark County modeling domain and approach is also supported by previous modeling work conducted in Clark County (Fugitive Dust and Other Source Contributions to PM<sub>10</sub> in Nevada's Las Vegas Valley, DRI Document No. 4039.2F1, April 18, 1997) which found that sources of PM<sub>10</sub> have a small radius of influence.

Clark County's extensive micro-scale modeling of worst case conditions also takes into account the nature of PM<sub>10</sub> and the DRI modeling work on range of influence of PM<sub>10</sub> sources in Clark County. Focusing on relatively small areas around the monitors to explain the exceedances provides a prudent and conservative approach to demonstrating that attainment can be achieved through control of these sources under worst case conditions. Choosing micro-scale areas representative of the sources that cause exceedances provides a strong basis for the attainment demonstration. Including outlying areas would not be a valid approach, unless dispersion modeling were done instead of the inventory rollback. In that case, the cumulatively large emissions from outlying areas would be far enough away that they would be dispersed by the time they reached the exceedance areas, and contribute insignificantly. Knowing that, there is little point in including such outlying emissions.

In summary, the BLM disposal area, and even more so the micro-scale areas, are smaller than the nonattainment area, but are adequate for attainment demonstration purposes because they include the sources and receptor locations that are relevant to, or contribute to, PM<sub>10</sub> NAAQS exceedances. Focusing on these areas avoids wasting resources evaluating sources that contribute little to exceedances, and that would distort (and overwhelm) the inventory rollback approach. Clark County consulted extensively with U.S. EPA staff in setting the optimal modeling

domain boundary and micro-scale boundaries for the PM<sub>10</sub> attainment demonstration and is confident that the SIP attainment demonstration conforms with applicable modeling guidance and accepted practices and meets all legal requirements.

13. Comment noted. U.S. EPA has stated that wherever possible, source-specific emission factors be used. This is the case for the fugitive dust factors and approval of these factors are part of the overall approval of the SIP.
15. Comment noted. Clark County followed the parameters set by U.S. EPA Region IX in preparation of the SIP.
16. Comment noted. Our initial response to comment 16 in the April 17, 2001 Sierra Club letter remains valid. Regarding the proposed PM<sub>2.5</sub> standard, Clark County has no legal authority to implement the standard prior to it being fully promulgated by the U.S. EPA. Additionally, and as noted in our initial response, analysis of the monitored data to date specifically demonstrates the Las Vegas Valley to be in attainment of both the proposed annual and 24-hour PM<sub>2.5</sub> standard. Additionally, federal vehicle requirements will lower the emission rate of particulate from vehicles in future years (Chapter 4) offsetting the potential impacts from increased vehicle traffic.
17. Comment noted. Part of the reasonable further progress reports is a review of the emission inventories and a confirmation of future inventories. Clark County has made a commitment to revise the SIP, including additional control measures, if significant changes occur in the emission inventories. This commitment includes all sources, including stationary sources.
19. Implementation of the program will not result in reductions of emissions. Therefore, the cost per ton of emissions reduced cannot be calculated. In our response to the previous Sierra Club comments on this issue, Clark County is proposing to amend Section 90 of the AQR to require that large land owners with a commutative acreage of 10,000 acres or greater of open area or vacant land in the nonattainment area be required to submit a dust mitigation plan. As noted in Section 4.3.1 of the adopted SIP, this requirement will be a useful enforcement tool (that can increase the efficiency and economy of AQD enforcement efforts), but will not result in additional reductions of emissions. It is still not cost effective to require smaller parcels of owners of fewer acres as such a limit would require additional AQD staff with no way to recover the additional cost.
20. Clark County could require upwind/downwind monitoring, but the data from these monitors would not establish that BACM was, or was not being

effectively implemented for the subject activity. Clark County is not aware of any credible basis for linking an upwind/downwind particulate concentration differential to the application of BACM level of control. The fact that the Las Vegas Valley experiences variable winds in terms of both direction and intensity is well known to County staff. No amount of additional meteorological analyses will allow a construction site operator to predict what direction the wind is going to blow during the next hour at a construction site. The County could develop a protocol for setting up upwind/downwind monitoring arrays, but this would not address the more basic question of what the data from the monitors is related to in terms of control measure implementation. Unwind/downwind monitoring is not a technologically feasible control measure.

21. BACM means Best Available Control Measure. A control measure which only achieves a 50 percent emission reduction does not meet the test for BACM for fugitive dust sources at construction sites, given the availability of alternative measures which provide significantly greater emission reductions for these same sources. The assertion that Clark County did not evaluate this measure as potential BACM for the SIP is incorrect. In fact, Clark County spent nearly \$40,000 to evaluate this single control measure for the SIP. However, the study showed this control measure did not reduce emissions to a level to be considered a best available control measure. As documented throughout Chapter 4 of the SIP, Clark County worked closely with the Health District Air Quality Division PM Research Advisory Committee beginning in early 1998 to evaluate and develop control measures for the SIP.
22. An analysis of Transportation Control Measures (TCMs) for Clark County was conducted by Lima & Associates in May 1998 and the report is incorporated in Appendix B of the August 2000 Las Vegas Valley Carbon Monoxide SIP. An assessment of the potential TCMs found that they have a low percentage effectiveness in reducing PM<sub>10</sub> emissions and they are not considered to be effective PM<sub>10</sub> controls. The U.S. EPA has not provided guidance on how to quantify the benefits of TCMs on PM<sub>10</sub> emissions and it was, therefore, not possible to specifically evaluate the potential benefit of TCMs as potential control measures. Additionally, the low percentage effectiveness in reducing PM<sub>10</sub> emissions from paved road dust makes these control measures much less effective than the best control measures implemented.
23. Our initial response to comment 23 stated that "staff did not receive any indication that the public would voluntarily comply with low speed limits on these roads." Since we found the public would not voluntarily comply with speed limits, we examined the feasibility of enforcing such limits and found that to be infeasible as discussed in Section 4.3.5 of the SIP. Additionally, the control measures implemented, paving and stabilization, are more

effective than speed controls and in the case of paving, will reduce emissions regardless of speed.

27. Comment noted. Clark County does not concur that rule amendments must be adopted in final form before Clark County can approve the SIP for submittal to the U. S. EPA.
28. The revised rule language will strengthen the regulation. Additional implementation 100-foot plume/no visible emissions requirements are infeasible for the reasons cited in the plan. Note also that the revised plume limitations do not contain a wind speed waiver condition as implemented in the South Coast version of this control measure.
29. For sites where cut and fill is required, by completing the cut and fill on the site at one time, emissions from transporting and stockpiling are eliminated. The result is to lower the potential for emissions. This cannot be accomplished if a limit on the acreage that can be graded and disturbed at any one time is put in place. Limiting acreage is not a feasible control measure. This is articulated in Chapter 4 of the SIP.
32. The additional information regarding the stormwater permit was added to Section F of Appendix J. The stormwater permit sweeping frequency of every 5 to 10 days for urban roads may be more stringent than the SIP commitments for sweeping roads, both urban and rural, throughout the nonattainment area. On average, streets are swept every two weeks throughout the nonattainment area regardless of their classification of urban or rural.
34. All potential BACM were first considered for complete implementation and then for partial implementation. Measures that were clearly less effective than other measures available for the same process were not considered as BACM.
35. The Clark County Board of County Commissioners has assumed financial responsibilities for all Air Quality functions, including commitments in the SIP. The Governor of the State of Nevada designated these responsibilities to the Board of County Commissioners by letter dated June 21, 2001. On July 3, 2001 the Board of County Commissioners accepted the Governor's designation as the air pollution control agency for Clark County.
36. As provided in our initial response on this item, the Air Quality Regulations adopted by the District Board of Health of Clark County, in addition to establishing the control measures as identified in Chapter 4, provides for the methods to enforce those control measures. Additional information concerning compliance and enforcement are in Chapter 4, Section 4.10,

and Appendix L, pages L-2, L-10, L-11, and L-13. Specific minimum penalties were adopted onto AQR Section 9.

37. Air Quality programs in Clark County are funded by a combination of federal grants, existing state smog check fees, fees collected by AQD for permitting and from the general fund. The budget and funding is part of the public record of the Board of County Commissioners. As stated in response to comment 35, the Clark County Board of County Commissioners has made a commitment to fund air quality programs.
39. The Clark County District Board of Health's decision to consider candidate contingency measures is binding as the SIP has been adopted by the Clark County Board of Commissioners and it is their responsibility to attain the projected emission reduction milestones.
40. Comment noted. Please see response to comment 12.
- 43.-53. With regard to the 100-foot plume/no visible please see our response to comment 28 above. An analysis of the respective Clark County and Maricopa County requirements for stockpiles provide a case study on why Clark County's flexible employment of Best Management Practices provide greater real world emission reductions than the "one size fits all" tarp requirement implemented by Maricopa County. For most soil types with sufficient clay content to effectively "crust" with wetting, use of tarps is not the most effective control measure for preventing fugitive dust under windy dry desert conditions. Even moderate winds will cause the tarp to beat on the stockpile, destroying any surface crust that may have formed. When the tarp is removed, you have an instant dust problem. Fugitive emissions also occur on a more limited basis while the tarp is in place when the wind beating action occurs. For those soil types that do not form an effective surface crust when wetted, use of tarps or other wind barriers may be the most effective control option. The Clark County regulatory program allows for what is truly the "Best Available Control Measure" to be employed, whereas other programs do not. Therefore, Clark County has implemented the most stringent control measure for stockpiles.
- 54.-56. Comments noted. Clark County has followed the U.S. EPA criteria in the extension request as presented in Chapter 7 of the SIP.