

power producing facilities will likely only choose to make use of if RTC prices exceed the mitigation fee. Emissions in excess of RTC holdings for which power plants pay mitigation fees will be offset by subsequent emissions reductions from non-RECLAIM sources or by reductions of future RECLAIM facility allocations at those power plants which exceeded their holdings.

*Comment #7:* OCE stated that the revisions to the RECLAIM program rules violate Sec. 110(l) of the CAA because exemptions provided for power producing facilities will interfere with attainment, RFP, and RACT. The mitigation fee program and exemptions given to power producers in Rules 2004 and 2010 will “explode the emissions cap” and interfere with attainment and RFP requirements. The proposed action and associated TSD should have explained the agency’s finding that the SIP revisions did not interfere with RFP and attainment.

*Response #7:* There are no exemptions. Any emissions for which a facility does not possess sufficient RTCs will be offset either by concurrent emissions reductions obtained via the Air Quality Investment Program (for non-power producing facilities) or by concurrent emissions reductions or future reductions of emissions allocations via the Mitigation Fee Program (for power producing facilities). Any emissions for which concurrent offsets are unavailable will be compensated for by subsequent deductions from allocations. Thus the environment will be made whole and RECLAIM facilities will continue to have an incentive to comply with program requirements. The SCAQMD has achieved excess NO<sub>x</sub> reductions at present so any temporal shift in RECLAIM reductions between now and 2005 will not affect RFP. Attainment is due in 2010 which is well after the Mitigation Fee Program ends so attainment will not be affected.

*Comment #8:* OCE stated that the revisions to the RECLAIM program rules immunize power producers from EPA and citizen suits in violation of CAA Section 110 and EPA guidance.

*Response #8:* While the RECLAIM requirements for power producers have been modified, citizens may still bring suit against RECLAIM facilities to enforce compliance with the revised program requirements.

*Comment #9:* CBE stated that the proposed SIP revisions remove the incentive for pollution control thereby frustrating RFP and delaying attainment.

*Response #9:* The RECLAIM cap remains unchanged from the current SIP-approved version of the program.

While there may be temporary exceedences of the cap due to power plant emissions in excess of RTC holdings by such facilities, these exceedences will not interfere with RFP because they will be more than offset by surplus reductions already obtained by SCAQMD from mobile sources. Attainment will not be delayed because the MFP will end well before the attainment date.

*Comment #10:* OCE stated that EPA approved the program rule revisions solely on the basis that the revisions did not relax the SIP. *Hall v. EPA* requires EPA to do more.

*Response #10:* This was not the basis for our action. We performed the analyses described above pertaining to attainment, RFP, and RACT.

*Comment #11:* OCE stated that requirements for quarterly compliance are lifted for power producing facilities. Because pollution occurs on a daily basis, RECLAIM should continue to assure quarterly rather than annual compliance.

*Response #11:* The purpose of the quarterly compliance requirements is to assure that correct and timely demand signals are sent to the market and price signals are received by the facilities. Now that power producers are temporarily not allowed to buy credits from the RECLAIM market in general and their price is temporarily capped at \$7.50/lb. (if they choose to participate in the MFP) the purposes of quarterly reconciliation are rendered moot for this period of time.

*Comment #12:* OCE stated that allocations will not be decreased until the year 2004. Sufficient reductions might not be obtained by then to offset all of the emissions of facilities utilizing the MFP.

*Response #12:* Allocations will be decreased if and when there is a shortfall of reductions obtained through projects funded via the MFP. This will happen beginning in the year 2003 (for year 2000 exceedences) and will end no later than the year 2005. By this point all power plant emissions will have been reconciled with RTCs, offset by reductions funded through the MFP, or deducted from facility allocations.

*Comment #13:* OCE stated that EPA’s proposed action did not demonstrate that RECLAIM fulfills RACT requirements. Does the MFP interfere with RACT requirements by allowing facilities to exceed allocations until 2004?

*Response #13:* RACT-in-the-aggregate was demonstrated at the beginning of RECLAIM in 1993. Since then the emissions cap has declined significantly. RACT is required in the

aggregate across all RECLAIM facilities only. There is no CAA requirement, under an EIP, that individual facilities or particular source categories meet RACT.

*Comment #14:* OCE stated that it is unclear what is meant by “best available information” which is the basis for environmental dispatch under Rule 2009. Also, Rule 2009 requires power producers to implement BARCT. What is the difference between BARCT and RACT?

*Response #14:* Rule 2009 was not submitted to EPA and is not part of this rulemaking. BARCT is defined under California state law and not under the CAA. This is a state-only requirement. As it happens, BARCT is more stringent than RACT.

*Comment #15:* OCE stated that Rule 2009 has not been submitted to EPA. Therefore the BARCT requirement for power plants will not be enforceable by citizens or EPA. Without the implementation of BARCT the MFP will fail.

*Response #15:* Such enforcement is not necessary to meet the requirements of the CAA. RFP is assured because of the excess NO<sub>x</sub> reductions already obtained by the SCAQMD through mobile sources measures. Attainment will not be interfered with by the MFP since the MFP will no longer be in effect well before the attainment date. Power producing facilities may seek to offset any emissions in excess of their RTC holdings via the MFP. Their participation fees will be used by the SCAQMD to obtain offsetting reductions from non-RECLAIM sources. Any shortfall in reductions obtained will be made up for through deductions from future-year allocations for those facilities that experienced exceedences. The MFP is a temporary program that will end by 2005. All exceedences are required to be reconciled by this time irrespective of whether a power producing facility has installed BARCT.

*Comment #16:* OCE stated that EPA has approved “pilot credits” to be used in the MFP. How can credits not yet acquired meet the EIP requirements for surplus, quantifiable, enforceable, and permanent?

*Response #16:* EPA has not approved any credits but rather has approved credit generation rules that themselves contain protocols which will assure that credits generated thereunder will meet the EIP requirements. See 67 FR 5729, February 7, 2002.

*Comment #17:* OCE stated that EPA should have addressed all of the issues raised in these comments in the FRN and especially in the TSD. EPA should remove the proposed conditional