

Air quality agency may scrap cap-and-trade program

David Danelski, *The Press-Enterprise*, 10-23-16

Southern California's cap-and-trade marketplace that's been used for 22 years to limit air pollution from the region's top 275 industrial polluters may be scrapped.

Under pressure from federal and state regulators, and a lawsuit from a coalition of environmental groups, officials with the South Coast Air Quality Management District are considering phasing out the once-ballyhooed program that gave industry the choice between buying pollution credits or installing pollution controls.

The change in thinking comes as the air district prepares a 15-year plan to cut pollution to meet looming deadlines to meet the federal health standards for smog that must be approved by state regulators.

Philip Fine, the air district's deputy executive officer, said in an interview that the air district's Regional Clean Air Incentives Market, or Reclaim, may have outlived its effectiveness because meeting health standards in the coming years may require nearly all the oil refineries, power plants, and factories in the program to install state-of-the-art pollution controls. That leaves little room for the give and take of a cap-and-trade marketplace.

"We need to assess the benefits of returning to command and control," said Fine, referring to traditional regulations that require polluting facilities to meet specific emissions reductions.

The air district has a long way to go to meet the health standards.

It missed a 2015 federal deadline for the cleanup of fine-particle pollution associated with heart disease and various other health problems. And this year, the region so far has weathered 131 days that exceeded the health standard for lung-searing ozone. The region must meet one federal standard for ozone by 2023 and a tougher one in 2031.

The nitrogen-oxides targeted by the Reclaim program react with other pollutants in the atmosphere to form both ozone and fine particle pollution.

Pollution marketplace

Reclaim was sought by industry in the early 1990s and hailed by its supporters as a win for both businesses and the environment. Many environmentalists were suspicious and opposed it from the beginning.

Each polluting facility was allotted credits that allow a specific amount of nitrogen oxide emissions each year. Companies that reduce pollution are left with extra credits, which they can sell to other companies that want to increase emissions.

This gave individual companies flexibility, while the air district periodically required pollution drops among the entire group of facilities within the marketplace.

But the program has not always gone well.

In 2001, power plants were temporarily taken out of the market because they couldn't acquire enough credits to avoid blackouts.

The program later had trouble meeting its cleanup goals.

In 2005, the air district approved changes in the program designed to cut emissions from Reclaim facilities by 7.7 tons a day by 2012. But during those seven years, the reduction was only 4 tons, and more than half of the reductions came from the shutdown of facilities.

Also in 2005, the air district staff expected that the program would spur the installation of catalytic pollution controls on 51 refinery boiler or heater units by 2011. But only four were installed, and those were done at the behest of enforcement actions by the U.S. Environmental Protection Agency, said an air district report.

Late last year, the air district staff proposed making up for lost ground by cutting the emissions by 14 tons a day by 2022. But industry officials objected, and the air district's governing board approved a less-stringent goal of 12 tons.

That decision prompted a harshly worded Jan. 7 letter from Richard W. Corey, the executive officer of the California Air Resources Board. He wrote that the 12-ton reduction "falls short of what is needed" to meet federal and state health standards and does not appear to comply with state law.

In his letter, Corey said that he had directed his staff to assess whether the air district is meeting its legal obligations.

State air board spokeswoman Melanie Turner said in an email that the state assessment has not been completed, and the state air board still has the same concerns raised in the letter.

The EPA raised similar concerns in a March letter to the air district, saying that many of the Reclaim facilities are not required to use the best-known technologies for reducing emissions. But air district officials said the changes to the plan approved in December already had addressed those concerns.

Command and control

Meanwhile, a pending lawsuit filed by a coalition of environmental groups in Los Angeles County Superior Court demands that Reclaim be replaced with traditional "command and control" regulations, arguing that the district is not meeting its obligation to protect public health.

"As a program designed by industry for industry, it has helped the region's biggest polluters continue profiting from pollution, at the public's expense," said Adrian Martinez, an attorney for Earthjustice, one of the plaintiffs. "I urge the air district to abandon this broken system."

The program is particularly beneficial to oil refineries, Martinez said. These facilities put out 59 percent of the nitrogen oxide emissions of all the Reclaim facilities.

Officials with the Western States Petroleum Association, which represents the refinery owners, declined to be interviewed.

The industry group instead provided a prepared statement from Catherine Reheis-Boyd, the association president. It said that Reclaim resulted in 69 percent emission reductions since 1994. The participating facilities “have invested billions of dollars to achieve these reductions year after year.”

Martinez contends that too many pollution credits are available in the marketplace, giving polluters, particularly oil refineries, a less-expensive option to installing pollution controls.

Another problem, he said, has been companies selling their excess credits generated from plant shutdowns or downsizing.

Closure windfall

Consider the CalPortland Cement plant in Colton.

In 2009, the company closed its cement-making kilns there, and the Inland plant stopped being one of Southern California’s biggest emitters of nitrogen oxides.

But its pollution legacy lives on, despite the loss of 94 jobs.

At the time of the plant’s closure, CalPortland was left with enough pollution credits to emit 2.5 tons a day of nitrogen oxides, which is roughly 10 percent of all emissions allowed for the Reclaim facilities.

CalPortland sold these pollution credits, mostly to oil refineries operating in Los Angeles County, bringing the cement company \$82.3 million in windfalls, according to the air district.

This, in turn, allowed companies that bought the credits, including ExxonMobile, Chevron, and Ultramar, to put off adding available pollution controls to their refineries.

The air district’s Fine said that new rules approved this month will prevent such plant closure windfalls in the future. These rules now limit the amount of credits that can be sold when a plant is shut down.

Fine also said that if the Reclaim program survives, it would need to slash an additional 5 tons of nitrogen oxides by 2031.

And what becomes of the program is far from settled.

While Earthjustice’s Martinez calls it a “Ponzi scheme” for polluters, the Western States Petroleum Association says in its statement that the group “looks forward to working collaboratively with the district on future discussions about the Reclaim program and air-quality policies that benefit Southern California residents.”