December 11, 2003

Robert Kaplan
Division Director
Multimedia Enforcement Division
US Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington DC 20460-0001

RE: Draft Consent and Final Order for Animal Feeding Operations
and California Mandates for Agricultural Operations

Dear Mr. Kaplan:

I am writing to you on behalf of the California Air Pollution Control Officers Association (CAPCOA), which represents the thirty-five local air pollution control districts in California. We appreciated the opportunity to meet with you in San Francisco on November 13, 2003, to discuss our mutual efforts to refine emission factors for agricultural activities, and to provide a clear timeline for ensuring all such facilities comply with applicable requirements for air quality permits. At that meeting, we discussed your draft Consent Agreement and Final Order for Animal Feeding Operations (AFOs) to comply with the federal Clean Air Act, our concerns about the draft Order, and how the order will interact with the mandates of new California statutes that go beyond the requirements of the federal Clean Air Act (CAA, or "the Act").

In brief, we understand your draft Order would grant AFOs immunity from federal enforcement of certain requirements of the Clean Air Act and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). In return, operators of AFOs would contribute $2,500 per facility towards a nationwide emissions monitoring program, and pay a $500 fine. At the end of the monitoring program, EPA would use the resulting emissions data to improve methodologies for estimating emissions from AFOs. Such operations would be required to comply with applicable Clean Air Act requirements based on the new emissions estimating methodologies.

We found your explanation of the draft Order very helpful, and you answered a number of our questions about the intent and scope of your effort. This explanation notwithstanding, we continue to have significant concerns about the wisdom of proceeding with the approach you outlined, and we strongly urge you to reconsider the fundamental concepts of the draft Order.

CAPCOA understands the value of obtaining emissions data and developing updated emissions estimating methodologies for AFOs. California has initiated research efforts for such purposes.[1] It is our hope that any national program to develop refined emissions data would include California emission sources and would coordinate with research efforts already underway in California and other states. We believe that any effort to develop emissions estimating methodologies must be conducted in an objective manner that will instill confidence by regulated entities and the general public. With regard to enforcement, we believe that any grant of immunity should be considered an extraordinary action—narrowly tailored and only issued where there is clear justification because of concrete emissions benefits.[2]

There are four broad policy implications that we believe must be addressed if this effort is to be successful. These include: (1) the use of enforcement immunity, including need, scope, and environmental benefit; (2) clearer articulation of authorities and implementation for federal, state, and local agencies; (3) public acceptance of the process and the resulting data; and (4) integration between EPA efforts and the process mandated by California law.

Enforcement Immunity: CAPCOA fundamentally believes that it is unsound public policy to use enforcement immunity as a means to obtain funding for research efforts. There are other ways to obtain the needed funds that would avoid not only the pitfalls of enforcement immunity, but concerns about consistent application of laws and future questions about the validity of the data gathered.

If EPA feels it is necessary to offer enforcement immunity, we believe it needs to be more limited in applicability. Specifically, no immunity should be allowed from requirements in SIPs that could impede attainment or significantly endanger public health, and immunity should only be offered to those operations specifically covered by the research effort underway. This would exclude, for example, engines or turbines that

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1 California has been conducting agricultural emissions research for over a decade. Currently CARB is co-sponsoring research to quantify dairywide hydrocarbon emissions, with other groups funding related ammonia emission research. With public and industry funds, UC Davis researchers are evaluating cattle manure mitigation measures and studying animal (enteric) and raw waste emissions. In June 2000, CARB and the California Department of Food and Agriculture formed an Agricultural Air Quality Committee, similar in makeup and mission to the USDA/EPA Agricultural Air Quality Task Force. That committee is currently developing additional CAFO emissions research plans and identifying public and industry funding resources.

2 In these respects, we agree with the principles stated by STAPPA/ALAPCO in their April 7, 2003 letter to Administrator Christine Todd Whitman regarding this proposal. STAPPA/ALAPCO stated that any agreement should meet the following principles: (1) there must be a clear environmental benefit at the end of the program; (2) any waiver of enforcement (i.e., "safe harbor") must be narrowly drawn and for a limited timeframe; (3) work should be conducted under accelerated timelines; (4) there should be no backsliding from current regulatory requirements or practices, and (5) enforcement waivers should be limited to participants in the agreement, with perhaps some consideration to exempting nonparticipating small farms.

run on waste gases that can and should reasonably be subject to permit review and applicable performance standards. In addition, the time period in which immunity would apply should be limited. EPA should also state a rationale for granting immunity in this case that will avoid setting a precedent supporting grants of immunity to other types of sources.

Further, we believe that a review of current farming practices (as well as SIP measures, regulations, and pollution prevention strategies) supports the inclusion of more rigorous interim and final emission reduction components in the draft order.

In formulating the terms of a consent agreement, we encourage EPA to review California laws setting forth the circumstances under which immunity from enforcement of air quality requirements may be granted. In this state, enforcement immunity is only granted through a variance process that is governed by statute, subject to specific limitations, and only available when authorized by a Hearing Board in a public hearing. Variances are awarded for finite terms and cannot be open-ended. In order to receive a variance, the owner/operator of the source must (among other things) mitigate emissions to the extent feasible; EPA has further stipulated that air districts must have some means of ensuring that all emission reductions that are foregone under the term of the variance are somehow offset.

Authorities & Implementation: As we discussed with you, CAPCOA has significant concerns about the lack of a coordinated process between EPA, the states, and local agencies. The use of enforcement discretion by EPA does not relieve states and local agencies from a requirement to implement and enforce CAA programs. It also does not relieve the source of its obligation to comply with applicable state or local requirements, nor is the source shielded from third-party enforcement of federal requirements.

We believe EPA can substantially improve the overall coordination of this process by ensuring that no immunity is granted without the consent of state and local air agencies. Absent such a process, state and local enforcement actions may be significantly undermined. A formal, public process of approval would enhance the standing of such agreements. This is particularly important in light of third party enforcement.

Public Acceptance: As you are aware, successful legal action brought by concerned residents in California has substantially shaped EPA actions regarding agricultural operations under the Act. Those same groups were instrumental in bringing forward the legislation that now governs such operations in California. If this current effort by EPA is to succeed, it is critical that these groups accept both the structure of the agreement and the emissions data that results from it. Any action by EPA that appears to circumvent the basic requirements of the CAA as they apply to agricultural operations is likely to be challenged.

CAPCOA believes that EPA can enhance the acceptance of the basic structure of the agreement by (1) limiting the term and scope of any enforcement immunity granted, (2) increasing the near and long-term environmental benefits of the agreement, and (3) using a formal public process, in partnership with states and local agencies, to implement the agreement. The data collection process should be overseen by an advisory body that

includes representation by key stakeholder groups. This body should determine the scope, materials, and methods of the data collection to assure the data are representative and unbiased. Further, your data collection effort should clearly recognize and incorporate research efforts currently underway in California and other states, since any disagreement in the results of the two efforts will jeopardize the success of both. Emissions-estimating methodologies that result from the consent agreement should be proposed for public comment in order to assure that they benefit from review and input by a wide range of experts and affected parties.

Finally, EPA should be aware that concerns have been raised in California that the impacts of pollution from agricultural activities disproportionately affect low income communities and communities of color. EPA will need to ensure that implementation of any agreement with agricultural operations does not disproportionately impact these groups.

Conflicts with California Statutes: As you are aware, this year the California Legislature approved SB 700, authored by Senator Dean Florez, which establishes a comprehensive set of air pollution control requirements for agricultural operations in this state. The bill requires emission reductions through the application of BACM and BARCT in federal PM nonattainment areas, the review of emissions data/factors for confined animal facilities (CAFs, similar to AFOs), permits and emission reductions from certain CAFs, and air permits for other agricultural operations, as specified. There are three general areas where the draft Order is in conflict with SB 700.

First, the bill requires the California Air Resources Board to review all available emissions data and technical information relating to emissions and ambient air quality standards, and based on that review, to define what constitutes a "large confined animal facility." This definition process must be completed by 7/1/05, which is significantly sooner than the proposed completion of emissions testing under the draft agreement; because the draft agreement does not include a deadline for the publishing of actual emissions factors, the timing conflict is likely to be as much as several years. This reduces the incentive for California farms to participate in EPA's program, and opens the door for disagreement between EPA's results and ours.

Second, the bill requires that the emission reduction rules for PM nonattainment areas and for CAFs be included in the SIP; the draft agreement, as currently written, would grant immunity from SIP rules. In this respect, the draft agreement contravenes the intent of the California Legislature, and would undermine the state's ability, as authorized under Section 116 of the Act, to enforce more stringent requirements. California has independent authority to implement air pollution control requirements for these sources; namely, its own ambient air quality standards and the provisions of California Clean Air Act. The existence of a broad EPA immunity agreement could, however, make it difficult as a practical matter for the state to enforce more stringent standards.

Third, the bill requires that air districts ensure that agricultural sources of air pollution obtain permits unless exempted from them, including an expressly stated provision to assure compliance with all requirements of the federal Act. This includes Operating Permits under Title V of the federal Act, at thresholds as low as 10 tons per year, which

can be easily reached with one or two diesel-fired water pumps. In the case of New Source Review requirements, there are SIP-approved rules with thresholds as low as one pound per day. Although the existing operations will not be subject to those rules, any new *or modified* operation will have to comply. Neglecting for the moment whether any enforcement immunity would include SIP-approved NSR rules, air districts in California will be establishing baselines and procedures for estimating changes to those baselines against the applicable NSR thresholds. This will begin as of January 1, 2004 (the effective date of the legislation), and will rely on the existing emission factors that have been used in SIP preparation. The process will, at a minimum, identify sources that potentially are subject to Title V regardless of any immunity taken stance by EPA. If a potentially affected facility believes it is shielded from Title V because of an immunity agreement with EPA, the facility is likely to be surprised and distressed to learn that the immunity does not include actions by the local permit authority or enforcement by third parties. Further, even fairly modest changes at an existing farm can trigger review under local SIP-approved NSR rules, permits, and control technology requirements.

While EPA is not required to accommodate the statutes of each individual state, we believe there are compelling reasons that EPA should consider the programs in California as you develop your national strategy. First, the majority of the agricultural operations affected by the federal Act will be in California, simply because of the proximity of existing agricultural centers and areas with severe or extreme nonattainment problems. Second, the state's nonattainment problems and the requirements of SB 700 will cause California to set the floor nationally for RACT, BARCT, BACT, and BACM. Third, California is required to move ahead with emissions factors for agricultural operations well in advance of EPA's proposed schedule; at a minimum, this creates the opportunity for disagreement over the ultimate results if two different processes yield two different sets of emission factors. Finally, it has been pressure from environmental groups *in California* and Agricultural interests *in California* that has forced this issue front and center. Proceeding without recognition of what is happening in California is likely to cause even greater problems for EPA in the long run.

Thank you for the opportunity to provide our comments to you. We have included a more comprehensive list of concerns as Attachment 1, along with detailed language suggestions if EPA chooses to proceed with the Order. A summary of SB 700 is included in Attachment 2. At our meeting in San Francisco, we explored some concepts to improve collaboration between EPA and California on the issue of research to improve agricultural emissions factors, and strategies to reduce emissions; we suggest further discussion of these ideas to identify a mutually agreeable strategy. Finally, we want to clearly state that CAPCOA recognizes that this is an issue of great concern in many parts of the country. We strongly urge EPA to work collaboratively with other state and local agencies, and we refer you to STAPPA/ALAPCO as a lead agency in that effort.

In closing, CAPCOA appreciates the effort you have undertaken to meet with us to identify and address our concerns with EPA's draft Consent Agreement and Final Order for Animal Feeding Operations. Unfortunately, as it is currently written, we cannot support the draft Order. We hope that additional work on both our parts will result in a structure we can all work with. If that is not possible, we ask that no agreement take

effect without concurrence by the state and, where applicable, local agency of jurisdiction.

If you have any questions about our comments or suggestions, please contact Mr. Peter Greenwald, at (909) 396-2111, or Ms. Barbara Lee, at (707) 433-5911.

Sincerely

Larry Greene,
President

/attachments: (2)

Attachment 1

CAPCOA Comments on
Draft Consent and Final Order for Animal Feeding Operations

General Comments Regarding Consent Agreement

CAPCOA believes that, in order to be successful, the consent agreement should be consistent with the following principles: (1) The effort to develop emissions estimating methodologists should be conducted in an objective manner that will instill confidence by regulated entities and the general public, (2) any grant of enforcement immunity should be considered an extraordinary action—narrowly tailored and only issued where there is clear justification because of concrete emissions benefits, and (3) an agreement should integrate well with California law, and consider research efforts under way in this state. We have the following concerns regarding consistency of the draft agreement with these principles:

1. *Need for Immunity*. EPA has authority under the Clean Air Act to require AFOs to provide emissions data. It thus is not apparent why EPA would consider giving up enforcement authority in exchange for establishment of a monitoring program. To the extent that the purpose is to obtain funds to support monitoring, we question whether or not acquisition of funds is adequate justification for relinquishing enforcement authority. We also question whether or not EPA has adequately investigated other sources of funding. In order to enhance the prospects for public acceptance of the agreement, EPA should publicly describe its reasoning regarding these issues before the agreement is finalized.

2. *Delays Beyond Deadlines in California Statutes*. State law (SB 700) establishes deadlines for compliance by agricultural applications with air quality requirements. These deadlines are generally earlier than the dates by which emissions estimating methodologies are expected to be available through the draft consent agreement. For example, under the legislation, the California Air Resources Board (CARB) must, by July 1, 2005, publicly review emission factors for confined animal facilities, and define what is a large confined animal facility. This definition will be used by local air districts in establishing rules and regulations requiring large confined animal facilities to obtain a permit to reduce, to the extent feasible, emissions of air contaminants from the facility. Under the draft consent agreement, however, emissions monitoring and related activities may take two years, after which EPA would establish emission factors in an unspecified timeframe. This consent agreement timeframe, coupled with the fact that research underway in California is expected to provide earlier results in time for implementation of SB 700, makes it difficult to discern benefits of the consent agreement for air quality in this state. EPA should thus attempt to expedite the process under the consent agreement to more closely match the timelines set forth in California law.

3. *Perception of Industry Influence over Emissions Monitoring and Estimating Procedure*. Under the proposed agreement, AFOs would establish an independent organization that will collect funds and contract with a qualified independent third party to conduct the monitoring program. While the contractor would have to submit a monitoring plan to EPA for approval, we expect that the results of this effort could be subject to criticism by environmental groups and the general public as having been carried out by private contractors that were *chosen* and *funded* by the sources that will be *subject to enforcement.* Such criticism would be most likely to ensue if emissions estimating methodologies developed pursuant to the consent agreement turn out to differ significantly from those resulting from the research programs in California. In order to maximize the prospects for public acceptance of the results of research efforts under the consent agreement, we suggest that such efforts be undertaken through an entity that is more completely removed from the source operators. In addition, EPA should specify how it will monitor the testing and research effort.

4. *Breadth of Immunity – Rules and Time Covered*. The proposed agreement would immunize sources from permitting requirements and "any other federally enforceable state SIP requirements based on annual emissions" relating to emissions of VOCs, NOx, Hydrogen Sulfide, and particulates. While the scope of this immunity is not clear (e.g. does it cover requirements such as RACT that apply to "major sources," a term defined in the Clean Air Act based on annual emissions?), the scope potentially is broad—encompassing such key requirements as LAER. Moreover, the time period for which immunity would be granted extends to past, present, *and future* violations—until 30 to 300 days after EPA publishes emissions estimating methodologies. There is, however, *no deadline for EPA to publish such methodologies*. Moreover, there is no provision terminating immunity if EPA fails to establish methodologies within a reasonable timeframe. We view a grant of immunity from unknown future acts to be a questionable action under any circumstances; it is particularly bad policy in this situation where there is no specific end date for immunity. The scope and timeframe of immunity thus should be better defined and limited.

5. *Uncertain and Insufficient Emissions Benefits to Justify Grant of Immunity*. Despite the grant of immunity, the proposed agreement will not result in any benefits beyond compliance with current emission requirements. Indeed, other than having accepted the emissions estimation methodologies developed by their contractor, sources would remain free to dispute the emission control requirements that regulatory agencies ultimately seek to impose. In sum, there is no requirement that *any* particular level of emission control will be achieved through this agreement. The agreement should be modified to ensure that a grant of immunity is justified by achievement of tangible emissions benefits.

6. *Breadth of Immunity – Types of Sources*. The enforcement immunity would apply to sources listed in an attachment which has not yet been provided, or

which may be negotiated with individual AFOs. The criteria for types of sources that could be subject to immunity have not been fully fleshed out and could potentially include operations with little tie to agricultural activities. For example, the agreement apparently would cover waste-to-energy systems, but there is no minimum percentage of fuel burned in such systems that must be from agricultural waste. Absent such criteria, a plant that operates only on a small portion of waste gas could be covered. Other potentially-covered operations include activities as remote from agriculture as painting of structures. The agreement should thus be modified to be more specific regarding types of sources covered.

7. *Practical Impact on State and Local Enforcement Activities*. While the draft agreement does not immunize facilities from state and local enforcement, the fact that EPA has granted immunity from federal enforcement would certainly be a circumstance that would be argued by sources in state or local enforcement actions. This could influence a court as it considers how serious the state or local charges are. The consent agreement could have an even greater negative impact on citizen suits, which are based entirely on federal requirements from which EPA proposes to grant immunity. We should discuss ways in which these potential impacts could be minimized.

8. *No Recognition of Permitting Agencies' Ability to Use Alternative Methodologies*. The draft agreement would preclude a source from challenging emissions estimating methodologies that are developed pursuant to this program (a provision that we support), but the agreement does not explicitly recognize the right of permitting agencies to utilize alternate methodologies, such as those based on the ongoing California research. It can be expected that operators of AFOs—having funded research under the consent agreement and having agreed to accept the results—will expect permitting agencies to accept those results as well. The consent agreement should, therefore, explicitly recognize that permitting agencies will utilize the best available data, whatever the source.

9. *Adverse Precedent*. We are concerned that other emissions source categories may ask for and receive amnesty from enforcement if EPA concludes this agreement. EPA should articulate a basis for a grant of enforcement immunity that does not set a precedent for future actions.

10. *No Interim Mitigations*. The draft agreement does not require AFOs to attempt to reduce pollution during the period of enforcement immunity. This is contrary to policies inherent in California variance laws, which require mitigation of emissions to the extent feasible during periods of deferred compliance. The agreement should be modified to require feasible interim mitigations.

11. *Lack of Public Involvement in Process With Attributes of Rulemaking.* Negotiation of the proposed consent agreement apparently has taken place primarily in meetings between EPA, source operators, and local agencies.

While this procedure may be typical in individual enforcement settlements, unlike typical enforcement settlements, the draft consent agreement is intended by EPA to have applicability to *an entire class of sources*. This action thus is more in the nature of rulemaking than enforcement. We understand that EPA intends to publish the draft agreement in the Federal Register for public notice and comment (an action that we support), but the applicability of rulemaking procedures and protections—including requirements for EPA to describe the basis of its action, as well as opportunities for judicial review—are unclear at this time. To ensure a successful program, EPA should provide all necessary and appropriate opportunity for public input and review.

12. *Inconsistent Enforcement Due to Potential Citizen Suits.* If successful citizens' suits can be brought against some, but not all, AFOs covered by the consent agreement, a patchwork of differing federal requirements—and competitive advantages and disadvantages—would result. EPA should explain how it intends to ensure consistent application of laws applicable to AFOs.

Proposed Modifications

CAPCOA urges EPA to modify the draft agreement and take other actions necessary to address the concerns stated above. Most importantly—

1. the process of developing emissions estimating methodologies should be carried out by an entity that is more removed from the AFOs,

2. the scope of immunity should be more limited in rules and time covered, as well as in types of sources covered, and

3. the agreement should be crafted in a manner that will not undermine state and local enforcement efforts.

In addition, the agreement should apply only in areas where the state and any local air quality agency consent to its applicability.

Additional Comments on Specific Provisions

§ 25 (covenant not to sue is only applicable to sources listed in Attachment A): Question: other than the engines, dust, rendering, and incineration equipment listed in this section, are there any limits to the types of sources that can be listed in Attachment A?

§ 26(B)(i)(d) (facilities installing waste to energy systems have an additional 180 days to submit permit applications): the effect of this provision is not clear. For example, would the agreement apply to such sources installed prior to the effective date of the agreement, those in the process of installation when the agreement is signed, or those installed after the agreement was signed?

§ 26(B)(iii) (requirement to install emissions control equipment specified by permits): No time deadline to comply with this requirement is specified.

§ 26(B)(v) (requirement to comply with final actions and orders by state or local authority that address nuisance and that are issued after respondent has been given notice an opportunity to be heard as required by state law): Violations of California nuisance law can be prosecuted as "strict liability" offenses even if no notice of opportunity to be heard has been provided. Under some circumstances, remedial orders can be issued by air districts without noticing an opportunity to be heard. This agreement should not refer to procedural safeguards that may not be applicable under state law.

§ 29 (waste to energy systems): This provision grants an extra 180 days to comply with the requirements of paragraph 26, which include such things as complying with state nuisance orders and certifying that a facility is not major. At most, this provision should only grant more time for filing a permit application.

§ 29(D) (stating respondent must agree to operate system for 24 months): there is no requirement that the system actually be operated for 24 months or more.

§ 29(E) (requiring respondent to obtain federal and state permits): There is no requirement that the permits be obtained *prior to construction or operation*.

§ 30 (granting immunity if respondent reports and corrects Clean Air Act violations that "cause a violation of federally-enforceable, applicable state ambient air quality standards"): Is unclear what type of violations this is referring to. California ambient air quality standards are generally not federally enforceable. In addition, this provision grants immunity if the violation is corrected within 60 days. California law allows enforcement without providing a 60 day correction period. Allowing such a time in this agreement may make it more difficult for a local district to enforce its rules.

Attachment 2

Summary

California Senate Bill 700 (Florez)

The following is a section-by-section analysis of Senate Bill 700, authored by Senator Dean Florez and chaptered on September 22, 2003.

SEC 1: Contains findings and declarations by the California Legislature regarding the significance of the air pollution problems facing California, the impact of air pollution on the health of Californians, and the contribution of agricultural sources to these problems.

SEC 2: Defines "agricultural source of air pollution" to include:

1) combined animal facilities

2) internal combustion engines that are not used for propulsion

3) any source subject to Title V of the federal clean air act, or any source subject to regulation by a local air district under the authority of the California Health & Safety Code.

SEC 3: Defines "fugitive emission" to include any emissions that cannot reasonably be made to pass through a stack or chimney-type opening.

SEC 4: Applies to air districts that, as of January 1, 2004, are designated severe nonattainment for a national ambient air quality standard for particulate matter. This currently includes the Great Basin Unified AQMD, the San Joaquin Valley Unified APCD, and the South Coast AQMD.

Requires air districts to adopt, implement, and submit for inclusion in the SIP, control measures necessary to reduce emissions from agricultural practices, including discing, tilling, cultivation, and the raising of animals. The measures are to meet a standard of "best available control measure" (generally dust mitigation type rules), or "best available retrofit control technology" (generally for sources like engines, or sources of organic emissions that can be reasonably controlled with technology).

Establishes a schedule for severe PM nonattainment areas for preliminary workshops (9/1/04), rule adoption (7/1/05), implementation and submittal (1/1/06).

Requires specific analyses of costs and other impacts, prioritization of efforts by cost-effectiveness, and that the types of engines regulated under this section, the degree of control, and the cost of control are similar to the types, degrees, and costs for other

similar sources in other source categories. In other words, hold engines at agricultural operations to the same standard that engines in other categories are held to.

SEC 5: Applies to areas that, as of January 1, 2004, are designated moderate nonattainment for a national ambient air quality standard for particulate matter. This currently includes: the Imperial County APCD, and the Mojave Desert AQMD.

Requires adoption of measures as specified in SEC 4, except the schedule only specifies a final implementation date of 1/1/2007.

SEC 6: Establishes comprehensive requirements for confined animal facilities.

- By 7/1/05, the California Air Resources Board is required to review all relevant scientific information about confined animal facilities, including emissions factors, and the impact of the emissions from the category on air quality and attainment of ambient standards, and develop a definition of "large confined animal facility." This definition is the basis for regulation in the rest of this section.

- Establishes requirements for each district that is designated nonattainment for a federal ozone standard as of 1/1/04.

    - By 7/1/06 (one year after the CARB defines "large CAF") the district must adopt, implement, and submit to the SIP a rule or regulation that requires permits for, and emission reductions from, any large CAF.

    - Requires owners and operators of large CAFs to apply for permits within six months of rule adoption (i.e., by 1/1/07), and to include in the application emissions-related information and an emissions mitigation plan. The emissions mitigation plan must address all pollutants that contribute to nonattainment of any ambient air quality standard (including all state and national AAQS); the degree of mitigation is to be RACT in moderate and serious nonattainment areas, and BARCT in severe and extreme nonattainment areas.

    - Specifies "not-to-exceed" deadlines for permit review (six months, i.e., 7/1/07) and implementation (1 year, i.e., 7/1/08), public notice requirements, and regular review and update of the permit and the mitigation measures (not less than once every three years).

    - Requires specific analyses of costs and other impacts.

    - Requires specific findings by the district before regulating any CAF that emits less than one half the applicable major source threshold. This provision would come into play only if the CARB defines "large CAF" to include sources that emit less than half the major source threshold in a district.

- References other applicable provisions of the Calif. H&SC, including rule adoption criteria and permit appeal procedures.

SEC 7: Requires districts that are designated attainment for the federal ozone standard to adopt the same rule or regulation specified in SEC 6, unless the district demonstrates that large CAFs do not contribute to a violation of any state or federal ambient air quality standard, except:

- The adoption deadline is 7/1/06 *(note that this deadline lagged the SEC 6 deadline by one year, until a final amendment to the bill that delayed the SEC 6 deadline but not this one; we believe this is an oversight and are working with the author to fix it).*

- The regulation is not to be included in the SIP.

SEC 8: Requires CAPCOA to establish and maintain a clearinghouse of mitigation measures for agricultural operations to support the implementation the bill.

SEC 9: Establishes permit requirements for agricultural operations.

Requires districts to ensure that any source subject to a requirement under the federal Clean Air Act obtains a permit in a manner that is consistent with federal requirements.

Establishes a presumptive exemption level for sources with actual emissions that are less than one half the major source threshold in the district, and a presumptive requirement for permits for sources with actual emissions that are greater than one half that threshold. The presumption is rebuttable upon making findings with regard to need and burden *(note that a finding is also required with regard to the applicability of SEC 6, however we believe there is a misprint here, or that the finding was incorporated incorrectly because it does not correspond with the general agreements between stakeholders as this portion of the bill was being crafted, nor does it, on its face, make sense.)*

SEC 10: Allows a district to exempt from all permit requirements (except federal requirements) any source that fully mitigates all sources of air emissions as specified, including all engines, farm equipment, fuel tanks, discing, tilling, cultivation, and the raising of crops and fowl, such that the air district finds that none of these sources cause or contribute to any violation of any ambient air quality standard.

SEC 11: Prohibits a district from requiring an existing agricultural operation to undergo NSR (unless it modifies), or to require emissions offsets from any operation that the district would not be able to issue ERCs to, based on the quality restrictions for ERCs.

SEC 12: Removes the basic agricultural exemption from the California H&SC.

SEC 13: Removes barriers that might otherwise exist for agricultural operations seeking funding for air pollution control.

SEC 14: Severability.

SEC 15: Provides that the state does not have to reimburse the local air districts for any costs incurred in implementing the bill.