

Clean Air Investment Fund
Summary of Status/Outstanding Issues/Next Steps

General: A procedures document was prepared in draft form and circulated for comments in both September and December. That document has been revised and finalized and is included as an attachment. The main purpose of the document was to spell out the particular working arrangement for a Clean Air Investment Fund (CAIF) in the Paso del Norte region.

Use of a CAIF for Compliance: It was determined that the CAIF is not needed in the Paso del Norte area for the original intended purpose – compliance relief valve. The main industrial drivers for this purpose – El Paso Electric and the grandfathered industries – have indicated that they do not need to use the fund for this purpose. In the case of El Paso Electric, recent legislation made it possible for a trading deal to be made that was independent of the fund. In the case of the grandfathered facilities, they all indicated one of several responses: 1) emissions are low anyway so compliance is not a problem, 2) compliance costs are not unreasonable, 3) already in compliance just need to change the way emissions information is documented, or 4) already moving forward with installing necessary equipment. It is clear that at this time and given the current regulatory climate, that a relief valve mechanism is not needed.

However, a need for a CAIF for regulatory compliance may become necessary at some point in the future as regulations change or as compliance becomes more costly.

Other Potential Uses of the CAIF: A major use that is deriving a lot of interest is the potential for the fund to be used for the collection of penalties. There may be the need to have a fund that can collect both US and Mexican penalty funds. Other possibilities are “tax-like” payments that are made by gasoline distributors in Mexico, voluntary payments, federal agency payments (such as EPA, DOE or others), voluntary payments from companies or voluntary payments from foundations.

Reasons to Establish a CAIF: Given that the CAIF is not needed at this time for a compliance relief valve, the question becomes is it worth setting up the fund at all. There are several reasons why a fund is worth setting up anyway.

- There may be a need for a CAIF for compliance relief in the future and starting the fund now would allow for experience to be gained that would make establishing the fund for compliance relief much easier and faster.
- There is a need to reduce overall emissions in the basin and some of that reduction must come from voluntary (i.e., non-regulatory) reductions. The CAIF is one mechanism that can create a system for voluntary reductions.
- There is a need to coordinate funding from various penalty sources to allow for a bigger project than each penalty alone.
- The CAIF could represent the first step towards the potential for basin-wide caps on emissions.

- The NAD Bank is interested in funding air projects and the CAIF could be a mechanism for funding various types of air reductions.
- The CAIF could act as a clearinghouse type fund that would accept donations/contributions/payments that are intended for air quality related projects so that there is more coordination between funders.
- The CAIF would involve the CAIF Project and Policy Teams that would provide greater communication and coordination of project funding.
- It is possible to have some type of developer impact fee that could be dedicated to the CAIF for air quality improvements.
- The CAIF would present opportunities for companies to pay into the fund for public relations purposes that would also result in improved air quality.
- The experience gained here could benefit others wishing to establish a CAIF.

Issues if the Fund is Not for Compliance: If the fund is not used for compliance purposes, the EPA Guidance for the establishment of CAIFs does not officially need to be followed. This fact means that the fund can take money from different sources, such as penalties, that are restricted in the guidance and it means that different types of emissions can be covered. Also, the strict rules about operation are not technically required. However, it is recommended that the CAIF operate in as close proximity to the guidelines established for several reasons: 1) this type of operation will give the fund a structure that is clearly outlined and defensible, 2) this type of operation will make it easier to convert the fund for compliance purposes in the future, 3) many of the guidance provisions are items that a fund would want to consider anyway (such as the surplus and quantifiable portions of the guidance), and 4) the guidance will help with answering the many questions that arise during the initial start up of the project. The major deviations will occur with regard to the issue of setting thresholds (doesn't need to be done) and the tie to the state's SIP (not necessary.)

Next Steps: The idea of establishment of a fund has gone as far as it can go in the discussion stages. There is a working structure that is outlined in the Procedures Document. At this point, it is necessary to decide whether to begin implementation of the fund or to decide to give up on the idea. There is little benefit to be gained from studying the issue in the abstract any longer. In order for the fund to be established, the following items must take place:

- A decision needs to be made by the JAC regarding whether to support implementation of the fund.
- The JAC needs to decide if it wants to support the establishment of the fund as a pilot project for the border area.
- The NAD Bank needs to propose the idea of running the fund to its Board of Directors.
- A source of funds for the initial pilot stage of the CAIF needs to be located. (Perhaps this could be EPA funds, NAD Bank Funds, or some other federal or private funding source or it could be a combination of these.)

At this point, it is time for a final decision on whether to proceed with implementation. If so, a pilot operational period could be established.