



Patty Senecal

Senior Director, Southern California Region

September 17, 2021

Mr. Michael Krause
Manager, Planning and Rules
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Via e-mail at: mkrause@aqmd.gov

**Re: SCAQMD Proposed Rule 1109.1, Emissions Of Oxides Of Nitrogen From
Petroleum Refineries And Related Operations
WSPA General Comments on Draft Rule Language (August 20, 2021 Revision)**

Dear Mr. Krause,

Western States Petroleum Association (WSPA) appreciates the opportunity to participate in the Working Group Meetings (WGMs) for South Coast Air Quality Management District (SCAQMD or District) Proposed Rule 1109.1, Emissions of Oxides of Nitrogen from Petroleum Refineries and Related Operations (PR1109.1). This proposed rulemaking is part of the District's larger project to transition facilities in the Regional Clean Air Incentives Market (RECLAIM) program for NO_x emissions to a command-and-control structure (i.e., the "RECLAIM Transition Project"). WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport, and market petroleum, petroleum products, natural gas, and other energy supplies in five western states including California. WSPA has been an active participant in air quality planning issues for over 30 years. WSPA-member companies operate petroleum refineries and other facilities in the South Coast Air Basin that are within the purview of the RECLAIM Program administered by the SCAQMD and will be impacted by PR1109.1.

On August 20, 2021, SCAQMD released Preliminary Draft Rule Language for PR1109.1 (Draft Rule).¹ The District has requested written comments on this rule by September 17, 2021. WSPA will be providing written comments on PR429.1 and PR1304, both of which are critical to the PR1109.1 rulemaking package. With this letter, WSPA is providing comments on the PR1109.1 Preliminary Draft Rule Language. In addition, we are attaching a redlined version of the District's August 20 version of PR 1109.1 rule based on the below comments. WSPA understands that SCAQMD is working on revising the Draft Rule, and we may provide comments on the revised language after it has been released.

- 1. Dates and deadlines for compliance are presented in numerous sections of the proposed rule. For clarity, all compliance dates should be presented in Section (g), Compliance Schedule. Additionally, all compliance dates for meeting emission limits should be based on the date of issuance of a Permit to Construct.**

¹ SCAQMD Proposed Rule 1109.1 Preliminary Draft Rule Language, released August 20, 2021. Available at [SCAQMD PR1109.1 page](#).

Section (g) of the rule provides requirements for the compliance schedule. However, a number of dates and deadlines are presented in other sections of the proposed rule.

For example, Section (d)(2)(B)(ii) states:

No later than 18 months after the South Coast AQMD Permit to Construct is issued, meet the NO_x and CO emission limits at the percent O₂ correction and the averaging time specified in Table 2 or subdivision (k), whichever is applicable.

All dates for permit application submission, compliance, etc. should be consolidated in Section (g) for clarity and to ensure there are no internal conflicts. Affected sections include, but are not limited to: (d)(2)(B), (d)(3), (d)(4), (d)(8), (d)(9), (e)(1)(A), and (e)(2)(A).

Additionally, dates for compliance with the rule's emissions standards should be based on the date a permit to construct/operate is issued. For example, Section (g)(2)(I) states:

(I) For an owner or operator with an approved B-Cap, demonstrate compliance with the emissions requirements and all other requirements no later than the compliance date for Phase I in I-Plan Option 4 and no later 54 months from South Coast AQMD Permit Application Submittal Date for all other phases of the selected iPlan option in Table 6 to meet the Phase I, Phase II, or Phase III Facility BARCT Emission Targets.

A facility has no control over whether the District issues a permit within a specified time period. Therefore they should not be held to a compliance date that is dependent on an application submittal date. All compliance requirements that are based on permit issuance should be tied to a time period after permit issuance. We have provided proposed language changes for each of these sections in the attached redlined version of the proposed rule.

2. In multiple sections the Draft Rule language requires that a facility submit a complete application. The word “complete” has a specific regulatory meaning. Having an application deemed “complete” by the District is outside the control of the facility. This language should be removed from the rule.

Several sections in the Draft Rule language require the facility submit a “complete” application package. For example (d)(2)(B) states:

(B) Before July 1, 2022, submit a complete South Coast AQMD permit application to apply for a permit condition that limits the NO_x emissions to the applicable levels specified in Table 2.

SCAQMD Rule 210 provides the requirements for applications for a permit required under Rules 201, 203, and 208. It states:

(b) The Executive Officer shall notify the applicant in writing within 30 calendar days of the receipt of an application for a permit, pursuant to Rule 201, as to whether or not the application contains sufficient information to be deemed complete. Upon receipt of any resubmittal or additional information after the application has been deemed incomplete a new 30-day period shall begin during which the Executive Officer shall determine and notify the applicant regarding completeness of the application...

Because the word “complete” has a specific regulatory meaning, and the onus to deem an application complete lies with the District, the word “complete” should be removed from language requiring a facility to submit an application.

3. Section (d)(2). Under section (d)(2)(C) the District is proposing that an owner or operator shall meet the Conditional NO_x and CO Emission Limits in Table 2 if the unit is listed in Table D-1 or D-2. Owners or operators choosing to comply with a B-Plan or

B-Cap will have the flexibility to choose the alternative endpoint for the emission unit, including for units listed in Tables D-1 or D-2.

WSPA recommends the language be updated as follows:

(d) Conditional NOx and CO Emission Limits

(2) An owner or operator of a uUnit ~~is-eligible may elect~~ to meet the NOx and CO emission limits in Table 2; in lieu of the NOx and CO emission limits in Table 1 provided:

(C) Notwithstanding subparagraph (d)(2)(A) ~~and (d)(2)(B)~~, an owner or operator shall meet the Conditional NOx and CO Emission Limits in Table 2 apply to a Unit in lieu of the NOx and CO Emission Limits in Table 1 if:

4. **Section (d)(2)(A)(i) could curtail the option to comply with Table 2 limits for any unit issued a permit on or after December 4, 2015 for installation of a post combustion control device for the unit. This creates a potential concern for stranded assets resulting from projects implemented as a result of the 2015 Amendments to Regulation XX (i.e. the RECLAIM shave). WSPA recommends the language be altered to eliminate this condition.**

Under Section (d)(2)(A), the District is proposing:

(A) An owner or operator of a unit is eligible to meet the NOx and CO emission limits in Table 2, in lieu of the NOx and CO emission limits in Table 1 provided:

(i) The Executive Officer has not issued a Permit to Construct on or after December 4, 2015 for the installation of a post combustion control device for the unit;

Companies have instigated emission control projects in response to the 2015 RECLAIM amendments. Facilities were not required to meet a specified endpoint for the RECLAIM shave. Therefore, a project may be underway or completed that reduces NOx emissions to below the Table 2 Conditional Limit, but not as low as the Table 1 BARCT Limit. The requirement above results in the potential for stranded asset issues on recently installed NOx control equipment. WSPA recommends the language be updated as follows:

(A) An owner or operator of a uUnit ~~is-eligible may elect~~ to meet the NOx and CO emission limits in Table 2; in lieu of the NOx and CO emission limits in Table 1 provided:

(i) The Executive Officer has not issued a Permit to Construct ~~with an emission limit at or below the Table 1 NOx emission limit~~ on or after December 4, 2015 for the installation of a post combustion control device for the unit;

5. **Sections (d)(3)(A) and (d)(4)(A) would require that operators of Boilers and Process Heaters <40 MMBtu/hr have a SCAQMD permit that includes an enforceable emission limit before January 1, 2023. While a facility can apply for a permit by a certain date, they do not control when the permit is issued by SCAQMD. WSPA understands from PR1109.1 WGM #25 that SCAQMD intends to revise the language in (d)(3) and (d)(4) to include a permit submittal deadline rather than requiring units to have a permit by a certain date. WSPA agrees with this change.**

WSPA recommends the language be altered as follows:

(A) ~~Before January 1, 2023, have a South Coast AQMD Permit that includes Submit a South Coast AQMD Permit application by no later than January 1, 2023 requesting an-enforceable~~ emission limits ~~that does not to~~ exceed 40 ppmv NOx and 400 ppmv

CO, at three percent O₂ correction, *as demonstrated pursuant to and limits the averaging times specified in ~~to~~ Table 1 or subdivision (k), whichever is applicable.*

- 6. Section (d)(4). The District has proposed that existing refinery heaters < 40 MMBtu/hr meet an initial BARCT limit of 40 ppmv NO_x pursuant to paragraph (d)(4) and Table 4 (Interim NO_x and CO Emission Limits). While these limits are proposed to go into force shortly after rule adoption, the District has not demonstrated whether the existing heaters in the category can meet this limit without new emission controls.**

Under Section (d)(4)(A), the District is proposing:

(4) Process Heaters with Rated Heat Input Less Than 40 MMBtu/hour An owner or operator of a process heater with a rated heat input capacity less than 40 MMBtu/hour shall:

(A) Before January 1, 2023, have a South Coast AQMD Permit that includes an enforceable emission limit that does not exceed 40 ppmv NO_x and 400 ppmv CO at three percent O₂ correction and limits the averaging times to Table 1 or subdivision (k), whichever is applicable;

These same NO_x and CO limits are also proposed as Interim Limits in Table 4 of the rule, so facilities would be required to comply with them shortly after rule adoption.

The District previously acknowledged that some of the existing heaters in the category do not meet this level of emissions. At WGM #14, units in the category were reported to have current NO_x emissions ranging from 5 to 100 ppmv.² This was also acknowledged by the District at WGM #25.³ The District needs to determine how many units are likely to require new emissions controls.

- 7. The District has not completed the cost effectiveness analyses required to establish a 40 ppm NO_x BARCT standard for refinery heaters < 40 MMBtu/hr category.**

As discussed above, there appear to be a number of heaters in the category that currently do not meet the proposed standard of 40 ppmv NO_x (based on a 2-hr average). The District has not provided stakeholders an assessment of the potential compliance costs or cost effectiveness. To the contrary, the District claimed there would be zero compliance cost for heaters < 20 MMBtu/hr to meet a 40 ppmv NO_x level, and negligible costs (i.e., \$3,900/tpy) for heaters rated 20-40 MMBtu/hr to meet a 30 ppmv NO_x level.⁴

Based on recommendations from the District's third-party expert (i.e., Norton Engineering Consultants, NEC), the District later revised its BARCT proposal for the 20-40 MMBtu/hr heaters category to 40 ppmv NO_x and combined it with the <20 MMBtu/hr category.⁵ The District has not presented stakeholders with a revised analysis of compliance costs or cost effectiveness for either the two original categories, or the now combined category. This is necessary to establish BARCT.

² SCAQMD PR1109.1 WGM #14 Presentation, August 27, 2020. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1109.1/pr1109-1-wgm-14-ab617-community.pdf?sfvrsn=22>.

³ SCAQMD PR1109.1 WGM #25, September 15, 2021, slides 17-18. Available at http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1109.1/pr1109-1_wgm25_presentation.pdf?sfvrsn=10.

⁴ SCAQMD PR1109.1 WGM #14 Presentation, August 27, 2020. Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1109.1/pr1109-1-wgm-14-ab617-community.pdf?sfvrsn=22>.

⁵ SCAQMD PR1109.1 WGM #16 presentation, Slides 19-22, December 10, 2020, Available at: <http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1109.1/pr1109-1-wgm16.pdf?sfvrsn=4>

8. The proposed Interim Limits for the <40 MMBtu/hr heater category may need to be revised pursuant the District’s “Guiding Principles” for Interim Limits.

For Interim Limits, District’s outlined the following “Guiding Principles:”⁶

- “Interim limits would reflect current operating conditions until BARCT emission limits are achieved and ensure enforceable emission limits are in place;
- “Interim limits are not an interim step down to BARCT emission limits;
- “Interim limits will apply to individual units and ensure RACT requirements are being met; and
- Interim limits will be incorporated in PR1109.1 for units that have compliance dates after January 1, 2024.”

In the case of the <40 MMBtu/hr heater category, the District is proposing Interim Limits (Table 4) which are identical to the initial BARCT limits pursuant to Section (d)(4). But as noted above, these may not actually represent “hold the line” levels for some of the heaters in the category. The District needs to consider whether different (i.e., higher) Interim Limits are needed to accomplish the objectives laid out in the Guiding Principles.

9. Sections (d)(3)(C) and (d)(4)(C). The District has proposed that existing refinery boilers and heaters <40 MMBtu/hr meet a more stringent deferred BARCT limit of 5 ppmv and 9 ppmv NOx, respectively. The District has not completed the analyses required to establish either of these limits as a BARCT standard.

Under Section (d)(3)(C), the District is proposing:

(3) Boilers with Rated Heat Input Less Than 40 MMBtu/hour

An owner or operator of a boiler with a rated heat input capacity less than 40 MMBtu/hour shall...

(C) No later than six months after an owner or operator cumulatively replaces either 50 percent or more of the burners in a boiler or replaces burners that represent 50 percent or more of the heat input in a boiler, where the cumulative replacement begins from July 1, 2022, shall:

(i) Submit a complete South Coast AQMD permit application to impose a 5 ppmv NOx emission limit and a 400 ppmv CO emission limit at three percent O2 correction that limits the averaging times to Table 1 or subdivision (k), whichever is applicable; and

(ii) Meet the emission limits pursuant to clause (d)(3)(C)(i) no later than 36 months after a South Coast AQMD Permit to Construct is issued.

Under Section (d)(4)(C), the District is proposing:

(4) Process Heaters with Rated Heat Input Less Than 40 MMBtu/hour

An owner or operator of a process heater with a rated heat input capacity less than 40 MMBtu/hour shall...

(C) Effective [TEN YEARS AFTER DATE OF ADOPTION], no later than six months after an owner or operator cumulatively replaces either 50 percent or more of the burners on a process heater or replaces burners that represent 50 percent or more of the heat input in a process heater, where the

⁶ PR1109.1 WGM #21 presentation, Slide 27, May 27, 2021. Available at: http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1109.1/pr1109-1_wgm21_presentation-mtgversion.pdf?sfvrsn=12

cumulative replacement begins [FIVE YEARS AFTER DATE OF ADOPTION] shall:

- (i) Submit a complete South Coast AQMD permit application to impose 9 ppmv NOx emission limit and a and 400 ppmv CO emission limit at three percent O2 correction and limits the averaging times to Table 1 or subdivision (k), whichever is applicable; and*
- (ii) Meet the emission limits pursuant to clause (d)(4)(C)(i) no later than 36 months after a South Coast AQMD Permit to Construct is issued.*

The District has not completed the cost-effectiveness analyses required to establish either of these deferred BARCT standards. California Health & Safety Code §40406 defines BARCT as “an emission limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and *economic impacts* by each class or category of source” (*Emphasis added*).⁷The District has not provided stakeholders an actual assessment of the potential compliance costs or the cost-effectiveness for these units. Instead, it has established requirements which would arbitrarily dictate when equipment will be deemed to have reached an “end-of-useful life,” and then claims that facilities would have no additional cost because “(m)ajority of cost will already be incurred by facility upon replacement.”⁸

Additionally, for process heaters <40 MMBtu/hr, the District has taken the position that it can establish a “technology forcing” BARCT standard based on emerging technologies which it reasonably expects to be available at some future time. Regardless, the District would still be obligated to demonstrate technical feasibility prior to imposing such a BARCT standard.

The District has proposed this emerging technology standard based on burner technology products which the District hopes may be available at some future date. But the District has noted at several PR1109.1 working group meetings that these burner products are still in the research & development (R&D) phase and are not commercially available. The District has pushed the effective date for this 9 ppmv NOx requirement in Section (d)(4)(B) to “ten years after date of adoption,” but this is an arbitrary and uncertain date. The District has no way to know whether these products will achieve commercial readiness within 10 years, or ever.

WSPA has previously commented that any such technology forcing standard must be subject to a District-led technology review step before the BARCT standard becomes effective. The stationary sources subject to PR1109.1 are not involved with the R&D or commercialization of the products on which the District’s standard would rely, and they have no ability to ensure it happens on an arbitrary District timetable.

In establishing a BARCT standard, the District must follow the Health & Safety Code requirements to demonstrate technical feasibility and cost-effectiveness. And in this case, the District has not met either obligation.

10. Section (e)(2)(B)(ii). The language in Section (e)(2)(B)(ii) would significantly restrict the flexibility for choosing emission limits within the B-Cap option. WSPA recommends that the language in this section be removed from the rule.

Under Section (e)(2)(B), the District has proposed:

⁷ California Health and Safety Code §40406. Available at:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=40406.&lawCode=HSC

⁸ SCAQMD, Preliminary Draft Staff Report for Proposed Rule 1109.1, released August 20, 2021, page 4-7 et seq. Available at [SCAQMD PR1109.1 page](#).

(2) *An owner or operator of a facility with six or more units that elects to meet the NOx and CO emission limits in an approved B-Cap in lieu of meeting Table 1 and Table 2 NOx concentration limits shall...*

(B) *Select an Alternative BARCT NOx Limit for Phase I, Phase II, and Phase III to meet the respective Phase I, Phase II, or Phase III BARCT Equivalent Mass Emissions where the Alternative BARCT NOx Limit shall not exceed...*

(ii) *The Conditional NOx and CO limit in Table 2, for any unit that is meeting a Conditional NOx and CO Emission Limit pursuant to subparagraphs (d)(2)(A) or (d)(2)(B).*

The purpose of the B-Cap is to allow facilities the flexibility to choose an Alternative BARCT NOx Limit. Therefore, facilities should not be required to meet the Conditional NOx Limit in Table 2. WSPA recommends that the language in Section (e)(2)(B)(ii) be removed from the rule.

11. Section (e)(2)(D). The BARCT endpoints for units should be based on the category of the equipment, irrespective of whether the facility is choosing to comply with the Table 1 and Table 2 standards, as applicable, or to utilize the B-Plan or B-Cap alternative compliance approaches. Thus, units subject to Table 1 emission limits should be represented as Table 1 units, and units subject to Table 2 emission limits should be represented as Table 2 units for the purpose of calculating emission reductions from decommissioning.

WSPA recommends the language in Section (e)(2)(B) be updated as follows:

(2) *An owner or operator of a facility with six or more units that elects to meet the NOx and CO emission limits in an approved B-Cap in lieu of meeting Table 1 and Table 2 NOx concentration limits shall:*

(D) *For any ~~u~~Unit that is permanently decommissioned, represent the decommissioned ~~u~~Unit as Table 1 or Table 2 NOx emissions, as applicable, in the Phase I, Phase II, ~~or~~ and if applicable Phase III Facility BARCT Emission Target in an approved B-Cap, ~~and for the unit that is decommissioned the owner or operator shall:~~*

12. Section (e)(2)(F)(iv). The language in Section (e)(2)(F)(iv) would impose additional restrictions for using emission reductions resulting from decommissioning units to meet the Facility BARCT Emission Target. This requirement does not result in additional emission reductions from facilities choosing the B-Cap option. Thus, the language should be removed from the rule.

Under Section (e)(2)(F)(iv), the District is proposing:

(2) *An owner or operator of a facility with six or more units that elects to meet the NOx and CO emission limits in an approved B-Cap in lieu of meeting Table 1 and Table 2 NOx concentration limits shall...*

(F) *Not add a new unit that will be subject to this rule that increases the facility emissions above applicable Phase I, Phase II, or Phase III Facility BARCT Emission Target, unless...*

(iv) *The total amount of NOx emission reductions from units that were decommissioned, represents 15 percent or less of Final Phase Facility BARCT Emission Target in an approved B-Cap.*

Facilities operating under an approved B-Cap should be allowed to take credit for all emission reductions from decommissioned units. Therefore, the language in Section (e)(2)(F)(iv) should be removed from the rule.

- 13. Section (f). Boilers and heaters rated at <40 MMBtu/hr operating with NOx CEMS are required to meet Interim Emission Limits listed in both Sections (f)(1) and (f)(2)(A), and therefore are double regulated. WSPA recommends that these units be subject to either the Limits in Table 4 or the Limits in Table 5, but not both.**
- 14. Section (g). The language in Section (g)(1) addresses compliance schedule for owners or operators of a unit that is required to meet the Table 1 emission limits. Section (g) does not address the compliance schedule for units that will meet the Table 2 Conditional Limits. WSPA recommends that the compliance schedule for units meeting the Conditional Limits be moved from Section (d)(2)(B) to a new Section (g)(2).**

WSPA recommends that the requirements currently listed in Section (d)(2)(B) be moved to a new Section (g)(2) to address the compliance schedule for units complying with Table 2 Conditional Limits.

(g)(2) An owner or operator that meets the conditions in subparagraph (d)(2)(A) that elects to meet the NOx and CO emission limits in Table 2 in lieu of the NOx and CO emission limits in Table 1 shall:

- (A) Before July 1, 2022, submit a South Coast AQMD permit application to apply for a permit condition that limits the NOx emissions to the applicable levels specified in Table 2; and*
- (B) No later than 18 months after the South Coast AQMD Permit to Construct is issued, meet the NOx and CO emission limits at the percent O2 correction and the averaging time specified in Table 2 or subdivision (k), whichever is applicable.*

- 15. Section (i)(4) provides the criteria for approval of the I-Plan, B-Plan, or B-Cap. As written, the language could be interpreted to allow for SCAQMD disapproval for any reason. WSPA recommends that the language be revised such that the plan will be approved provided it meets the listed criteria. WSPA also recommends that a timeframe for approval or disapproval of a plan be added to the rule language.**

Under Section (i)(4), the District is proposing:

- (4) The Executive Officer will notify the owner or operator in writing whether the I-Plan, B-Plan, or B-Cap is approved or disapproved based on the following criteria...*

The current rule language could be interpreted to allow for SCAQMD disapproval for any reason, resulting in a source being required to meet the Table 1 and Table 2 limits. The rule language should specify that approval will be granted if the listed criteria are met.

Additionally, the rule language should specify a timeline for response from the District for approval or disapproval of a Plan. WSPA recommends the language in Section (i)(4) be updated as follows.

- (4) The Executive Officer will notify the owner or operator in writing within 30 days whether the I-Plan, B-Plan, or B-Cap is approved or disapproved. An I-Plan, B-Plan, or B-Cap will be approved provided it meets ~~based on~~ the following criteria...*

16. Section (k) addresses source test requirements. Quarterly source testing is onerous and inconsistent with rules applicable to similar equipment. WSPA recommends that the required source test frequency be once/year.

Section (k) provides source test requirements. Table 7, Source Testing Schedule for Units without Ammonia Emissions in the Exhaust, and Table 8, Source Testing Schedule for Units with Ammonia Emissions in the Exhaust provide the source test schedule. Depending on whether a unit is operated with or without various pollutant CEMS, the rule requires source testing quarterly during the first 12 months of being subject to a Rule 1109.1 Emission Limit or ammonia South Coast AQMD permit limit (as applicable), and quarterly thereafter. The tables state that source tests may be conducted annually after the first 12 months if four consecutive quarterly source tests demonstrate compliance with emission limits.

Rule 1146, Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters requires source testing every 3 years for units with a rated heat input capacity ≥ 10 MMBtu/hr and every 5 years for units with a rated heat input capacity $5 - < 10$ MMBtu/hr. Rule 1146.1 Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, requires source testing every five years for units with a rated heat input capacity $> 2 - < 5$ MMBtu/hr. Rule 1134, Emissions of Oxides of Nitrogen from Stationary Gas Turbines, requires source testing on gas turbines every 1-3 years, depending on annual emissions of the unit.

The quarterly source tests in the Draft Rule language would be onerous and costly. The regulations for similar equipment require source testing every 1 – 5 years depending on equipment type. WSPA recommends that the required source test frequency be reduced to once per year.

17. Section (k)(3) addresses the source test schedule for units with ammonia emissions in the exhaust. PR 1109.1 does not limit ammonia emissions and does not require ammonia CEMS. Therefore, all items related to ammonia, including source test requirements, should be handled during the permitting process. Section (k)(3) should be removed from the rule.

18. Attachment B, Section B-2. It is understood that the intent of Section (d)(2)(C) and, by reference, Tables D-1 and D-2 is that these units would be Conditional Limit units by rule. To achieve this effect, the wording in Section B-2 should be revised.

WSPA recommends the language in Attachment B, Section B-2 be updated as follows:

(B-2) Final Phase Facility BARCT Emission Target

*The Final Phase Facility BARCT Emission Target is the Phase II Facility BARCT Emission Target for an I-Plan option with two phases or the Phase III Facility BARCT Emission Target for an I-Plan option with three phases. The Final Phase Facility BARCT Emission Target is used to establish the Phase II or Phase III BARCT Emission Target for a B-Cap. To establish the Final Phase Facility BARCT Emission Target, the owner or operator must select **whether** ~~if~~ the basis of the emission target for each ~~u~~Unit will be based on Table 1 or Table 2 NO_x concentration limits. The owner or operator shall only select Table 2 NO_x concentration limits if the requirements of subparagraphs (d)(2)(A) and (g)(2) for the Conditional NO_x Limits are met or if the ~~u~~Unit is identified **pursuant to subparagraph (d)(2)(C) ~~in~~ and** Attachment D. For all other ~~u~~Units, the owner or operator shall use NO_x limits from Table 1 as the basis of the Facility BARCT*

Emission Target. To calculate the Final Phase Facility BARCT Emission Target for B-Cap, the owner or operator shall use NOx concentration limits from ~~of~~ Table 1 for the ~~u~~Units that will be decommissioned.

19. Attachment B, requires that the Facility BARCT Emission Target be reduced by 10 percent for a B-Cap program. While WSPA does not agree with the inclusion of this additional environmental benefit, if it remains, the rule should provide the flexibility to meet the benefit by other means.

In Attachment B, Section B-4, the District is proposing:

(B-4) Calculating Phase I, Phase II, or Phase III Facility BARCT Emission Target

The Phase I, Phase II, or Phase III Facility BARCT Emission Targets are the total NOx mass emissions per facility based on the Total Facility NOx Emission Reductions and the Percent Reduction Target of Phase I, Phase II or Phase III of an I-Plan option in Table 6. For a B-Cap, each phase Facility BARCT Emission Targets shall be reduced by 10 percent.

U.S. EPA's Economic Incentive Program (EIP) Guidance⁹ indicates that the B-Cap is not an EIP. For example, when describing the types of discretionary EIPs, the EIP Guidance includes statements such as the following:

- An EIP may be an emission trading program, a financial mechanism program, a program such as a clean air investment fund (CAIF) that has features of both trading and financial mechanism programs, or a public information program.¹⁰
- The four general types of EIPs are emission trading programs, financial mechanisms, CAIFs, and public information programs.¹¹
- Unlike traditional CAA regulatory mechanisms, emission trading involves more than one party.¹²

Since the B-Cap does not involve trading, and clearly does not qualify as any of the other types of EIPs covered by the EIP Guidance, the B-Cap should not be subject to review under the EIP Guidance.

While the US EPA EIP guidance does generally require an additional environmental benefit to be included for certain applicable programs, the guidance "recognizes that the type of demonstration appropriate will depend on the goals and characteristics of the EIP [being] implemented."¹³ Other options for providing environmental benefit, in addition to the 10% additional emissions reduction, are as follows:

- Showing greater or more rapid emission reductions due to trading (e.g., early reductions)
- Reducing emission reductions generated by program participants by at least 10 percent
- Showing other environmental management improvements

⁹ Improving Air Quality with Economic Incentive Programs, US EPA, January 2001. Available at: <https://www.epa.gov/sites/default/files/2015-07/documents/eipfin.pdf>. Accessed: September 2021.

¹⁰ *Id.* at p. 15.

¹¹ *Id.* at p. 18.

¹² *Id.* at p. 78.

¹³ *Id.* at p. 56

- Improved administrative mechanisms (for example, your EIP achieves emissions reductions from sources not readily controllable through traditional regulation)
- Reduced administrative burdens on regulatory agencies that lead to increased environmental benefits through other regulatory programs
- Improved emissions inventories that enhance and lend increased certainty to State planning efforts
- The adoption of emission caps which over time constrain or reduce growth-related emissions beyond traditional regulatory approaches.
- For multi-source cap and trade program or a single source cap and trade program, includes a declining cap

If the requirement remains, the language should be updated to reflect the flexibility to meet the environmental benefit requirement by other means, as allowed in the EPA EIP Guidance Document.

20. Additional minor revisions and language clarifications are provided in the attached redline version of the Preliminary Draft Rule.

WSPA appreciates the opportunity to provide these comments related to PR1109.1. We look forward to continued discussion of this important rulemaking. If you have any questions, please contact me at (310) 808-2144 or via e-mail at psenecal@wspa.org.

Sincerely,



Attachment

Cc: Wayne Nastri, SCAQMD
Susan Nakamura, SCAQMD