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File No. 018282-0000

January 22, 2021

Susan Nakamura
Assistant Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: RECLAIM Transition Plan Draft Version 2.0

Dear Susan:

I am writing on behalf of the Regulatory Flexibility Group ("RFG") to provide comments on the RECLAIM Transition Plan Draft Version 2.0 ("Draft Transition Plan"). The RFG is an industry coalition comprised of companies in the refining, utility and aerospace sectors that operate facilities within the jurisdiction of the South Coast Air Quality Management District ("SCAQMD"). RFG member facilities are subject to the Regional Clean Air Incentives Market ("RECLAIM") program for NOx and will be seriously affected by the transition to a command-and-control regulatory structure that is currently underway. The RFG participated in the development of the NOx RECLAIM program from its inception and has been an active participant in all major amendments to the program, including those currently underway.

The comments below are presented in the order in which the issue is first discussed in the Draft Transition Plan. Page references in parentheses are to the Draft Transition Plan.

1. Effectiveness of NOx RECLAIM Program

The preface to the Draft Transition Plan states that a "windfall" of RECLAIM Trading Credits ("RTCs") entering the market from facilities that shut down resulted in delays of installation of cost-effective control equipment. (p. vii). The Draft Transition Plan should include a reference to the data and analysis supporting the assertion that RTCs from facilities that shut down resulted in delays to installation of control equipment. The analysis should include the offsetting effect of the demand for RTCs from new RECLAIM facilities that entered the program after its inception, which included a significant number of large natural gas fired power plants. Those facilities did not receive initial allocations, and were required to offset their potential to emit with RTCs from the market. The analysis should also take into consideration that Rule 2008 contemplated that mobile source credits generated pursuant to Regulation XVI Mobile Source Offset Programs would be used as RTCs in the RECLAIM program, but that

never came to fruition. Finally, to the extent that "windfall" RTCs associated with facility shutdowns ever adversely affected the NOx RECLAIM program, the issue was addressed through amendments adopted in October 2016.

The Draft Transition Plan states that "well over half the equipment at RECLAIM facilities is currently not at BARCT" as evidence of the shortcomings of the program (p. vii). Setting aside the fact that there is no evidence provided regarding whether or not installation of BARCT on that equipment would be cost-effective, the measure of success of a market-based cap and trade program is not the number of emission sources that are equipped with emission control equipment. The measure of success is whether or not aggregate mass emissions are within the aggregate cap established by the program. Contrary to oft-repeated but unsubstantiated assertions that the RECLAIM program was not effective at achieving emission reductions, evidence presented by staff to the Governing Board on February 7, 2020 demonstrates that the program has been highly effective – achieving a reduction in actual emissions of 50 tons per day from 1994 to 2017.[1] That represents a 70% reduction in emissions over the life of the program, and the same data illustrates that the program is on track to achieve an additional 10% reduction in actual emissions by 2023.[2]

RECLAIM Rule 2015 – Backstop Provisions requires that staff conduct annual program audits to assess various aspects of the program and to verify that program objectives are met. Staff has completed audits of facility records and completed annual audits of the RECLAIM program, and presented the results to the SCAQMD Governing Board, every year since the inception of the program. Based on those audits staff has determined that RECLAIM met its emissions goals for every compliance year except for Compliance Year 2000. For that year, NOx emissions exceeded programmatic allocations (by 11%) primarily due to emissions from electric generating facilities during the California energy crisis. Suggesting that ineffectiveness of the RECLAIM program is a reason to replace it with a command and control regime is contrary to the findings of effectiveness made almost every year since its inception.

2. Effects of Assembly Bill 617 ("AB617")

The Draft Transition Plan states that "Recent legislation, AB-617, accelerated South Coast AQMD efforts by requiring that air districts establish BARCT schedules no later than January 1, 2019 and implement BARCT no later than December 31, 2023 . . ." (p. vii).[3] It is not clear from the context whether the "efforts" referred to relate to achieving BARCT equivalent emission reductions or transitioning to a command and control regulatory regime, both of which are discussed in the portion of the paragraph preceding the quoted language, but in any event, AB617 did not "accelerate" either of these efforts.

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[1] NOx BARCT Rulemaking Update, Agenda Item 23, February 7, 2020 Governing Board hearing, slide 5.

[2] Id.

[3] Similar statements are made at p. 1-1 of the Draft Transition Plan.

As stated in the Draft Transition Plan, December 2015 amendments to the NOx RECLAIM program required RTC reductions of 12 tons per day from compliance years 2016 through 2022 to ensure BARCT equivalent emissions (p. vii). In addition, control measure CMB-05 contained in the 2016 Air Quality Management Plan ("2016 AQMP") calls for an additional 5 tons per day of reductions as soon as practicable, but no later than 2025. Thus, the NOx RECLAIM program as it currently exists, together with the additional reductions called for in CMB-05, already requires BARCT equivalent emissions in every year through at least 2025. The AB617 mandate to implement BARCT by December 31, 2023 did not accelerate any efforts on the part of SCAQMD – those efforts had already been undertaken when AB617 was signed into law.

Nor did AB617 "accelerate" SCAQMD efforts to transition the NOx RECLAIM program to a command and control regulatory regime. In fact, AB617 did not mandate such a transition at all – the transition is driven exclusively by CMB-05.

AB617 amended Division 26 of the California Health & Safety Code ("HSC") which establishes the authority and responsibility of the California Air Resources Board ("CARB") and the air districts relating to the attainment of ambient air quality standards, and includes the requirement that BARCT be installed on existing permitted sources under certain circumstances (see, HSC Sections 40919, 40920, 40920.5). HSC Section 40920.6 sets forth the process for BARCT rulemaking by air districts, including the following provisions:

> *(e) A district shall allow the retirement of marketable emission reduction credits under a program which complies with all of the requirements of Section 39616 , or emission reduction credits which meet all of the requirements of state and federal law, including, but not limited to, the requirements that those emission reduction credits be permanent, enforceable, quantifiable, and surplus, in lieu of any requirement for best available retrofit control technology, if the credit also complies with all district rules and regulations affecting those credits.*
>
> *(f) After a district has established the cost-effectiveness, in a dollar amount, for any rule or regulation adopted pursuant to this section or Section 40406 , 40703 , 40914 , 40918 , 40919 , 40920 , 40920.6 , or 40922 , the district, consistent with subdivision (d) of Section 40001, shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar amount per ton reduced, including the use of emission reduction credits, for any stationary source that has a demonstrated compliance cost exceeding that established dollar amount.*

Any suggestions that AB617 mandates emission controls on every source or precludes districts from taking advantage of the flexibility provided in HSC Sections 40920.6 (e) and (f) is simply incorrect. As explained below, HSC Sections 40920.6 (e) and (f) were unaffected by AB617, remain unchanged in the statute, and continue to be applicable to district BARCT rulemaking.

Early versions of AB617 released in June 2017 did not address BARCT retrofit obligations other than through the community monitoring and facility risk reduction programs. However, a version released on July 3, 2017 would have subjected all covered industrial entities to a new district-administered, but state-board defined, BARCT retrofit program. The initial proposed language would have required "use" of the specific control technologies by January 1, 2021 with three-year updates thereafter. Because the new language would have been placed among the facility emission reduction provisions of the statute instead of in the BARCT rulemaking section (ie., Section 40920.6), regulated industry expressed concerns that this new process appeared to bypass rulemaking at either the state or district levels.

A version of AB617 released on July 5, 2017 would have required districts to update BARCT determinations for covered source categories (i.e., "implement" BARCT) by January 1, 2021 and every three years thereafter. BARCT determinations would be done by districts using existing authority under HSC Section 40920.6, however, the new language was placed in its own new section of the HSC - Section 40920.7. During negotiations that occurred over the period of July 6-9 with representatives of the legislature, Governor's Office and CARB, regulated industry expressed serious concerns regarding whether placement of the new language in its own section (i.e., in a new Section 40920.7) suggested that the proposal intended to restrict rulemaking or to deprive the districts of the robust compliance flexibility authority in existing subdivisions (e) and (f) of Section 40920.6.

Following continued negotiations on July 9, 2017, agreement was reached to provide the clarity that industry sought regarding the retention of district compliance flexibility authority by placing the new BARCT program within existing Section 40920.6. Placement of the new BARCT retrofit language within the existing BARCT rulemaking section preserves district authority to take advantage of existing compliance flexibility alternatives, including those described in HSC Sections 40920.6 (e), which authorizes market-based programs such as RECLAIM. Thus, AB617 did not in any way mandate a transition from RECLAIM to a command and control regulatory regime or "accelerate" SCAQMD's efforts to do so.

3. "Dual Regulation" of RECLAIM Facilities

The Draft Transition Plan states that "Since U.S. EPA is suggesting that RECLAIM facilities will not transition out of RECLAIM until all landing rules, Regulation XX, and Regulation XIII are amended and approved by U.S. EPA, RECLAIM facilities will need to comply with provisions in command-and-control rules while in RECLAIM." (p. 2-2). RFG supports maintaining the RECLAIM program until all of the elements of the replacement program are in place. However, requiring RECLAIM facilities to simultaneously comply with Regulation XX and new command and control landing rules will result in disproportionate impacts on RECLAIM facilities relative to other facilities due to increased compliance costs (i.e., paying to construct and operate control equipment and for RECLAIM trading credits, and implementing duplicative monitoring, recordkeeping and reporting (MRR) requirements). HSC Section 39616(c)(7) prohibits imposing "disproportionate impacts, measured on an aggregate basis, on those stationary sources included in the [market based] program compared to other permitted stationary sources in the district's plan for attainment." To avoid these

disproportionate impacts, new command and control requirements should not beome effective until RECLAIM requirements have been removed.

4. Implementation Schedules

The Draft Implementation Plan indicates that compliance schedules in landing rules are driven in part by the AB617 requirement that districts "implement" BARCT by December 31, 2023 (p. 2-5). Both the language and context of HSC Section 40920.6 make clear that the term "implementation" requires a district to have adopted its updated BARCT rules by December 31, 2023 such that control installations are in process, but that the date for completion of installation and operation of controls on specific sources must continue to be determined on a fact-driven basis after fully considering cost and technological feasibility and necessary installation lead time. Any other reading would nullify the rulemaking procedural requirements of the section.

Staff's interpretation could create pressure for the SCAQMD to short-cut the required feasibility and cost-effectiveness analysis and thus impose controls that do not qualify as BARCT. It will be important to continue to ensure that the staff's BARCT analysis remains procedurally and factually robust and is not truncated nor otherwise distorted by the arbitrary 2023 date.

Because the RECLAIM program will remain in place until all of the transition rules and other program elements are in place, facilities will continue to comply with declining facility caps, which will ensure that updated BARCT will be achieved by December 31, 2023 whether or not the new landing rules are implemented. As discussed under Issue 2 above, implementing BARCT via the RECLAIM market-based system remains permissible under HSC Section 40920.6(e).

5. Equipment Replacement As BARCT

The Draft Transition Plan sets forth SCAQMD staff's position that BARCT emission limits may mandate replacement of the primary emitting equipment (p. 3-6). Staff makes two arguments in support of its position. First, it cites to dictionary definitions of "retrofit" and concludes that "replacement" is not specifically excluded from those definitions. Second, it cites to a California Supreme Court case, *American Coatings Ass'n v. South Coast Air Quality Mgt. Dist*., 54 Cal 4th 446 (2012), for the proposition that a BARCT standard may require replacement of the emitting equipment in its entirety. The RFG continues to disagree with this interpretation.

a. Relevant Statutory Provisions

At question is the scope of the SCAQMD's authority to require the use of BARCT for existing sources. That authority is both granted and limited by Health & Safety Code Section 40440(b)(1), which provides, in relevant part:

> (b) The rules and regulations adopted pursuant to subdivision (a) [authorizing SCAQMD board to adopt rules and regulations to

> carry out air quality management plan] shall do all of the following:
>
> (1) Require the use of best available control technology for new and modified sources and the use of best available retrofit control technology for existing sources.

Health & Safety Code Section 40406 defines BARCT as follows:

> As used in this chapter, "best available retrofit control technology" means 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.

Finally, Health & Safety Code Section 40920.6, specifies the procedures the SCAQMD is required to follow when establishing a BARCT standard, and provides, in part:

> (a) Prior to adopting rules or regulations to meet the requirement for best available retrofit control technology pursuant to Sections 40918, 40919, 40920 and 40920.5, or for a feasible measure pursuant to Section 40914, districts shall, in addition to other requirements of this division, do all of the following:
>
> (1) Identify one or more potential control options which achieves the emission reduction objectives for the regulation.
>
> (2) Review the information developed to assess the cost-effectiveness of the potential control option. For purposes of this paragraph, "cost-effectiveness" means the cost, in dollars, of the potential control option divided by emission reduction potential, in tons, of the potential control option.
>
> (3) Calculate the incremental cost-effectiveness for the potential control options identified in paragraph (1). To determine the incremental cost-effectiveness under this paragraph, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.
>
> (4) Consider, and review in a public meeting, all of the following:
>
> (A) The effectiveness of the proposed control option in meeting the requirements of this chapter and the

> requirements adopted by the state board pursuant to subdivision (b) of Section 39610.
>
> (B) The cost-effectiveness of each potential control option as assessed pursuant to paragraph (2).
>
> (C) The incremental cost-effectiveness between the potential control options as calculated pursuant to paragraph (3).
>
> (5) Make findings at the public hearing at which the regulation is adopted stating the reasons for the district's adoption of the proposed control option or options.

b. Interpreting The Meaning Of BARCT

i) Staff's "Common Sense Definition" Argument Is Flawed

Staff makes what it refers to as a "common sense definition" to support its conclusion that the term "retrofit" as used in Section 40406 encompasses "replacement" because "replacement" is not specifically excluded from the cited definitions of "retrofits." At first blush, this argument appears similar to a basic rule of statutory construction known as the "plain meaning rule," which means giving words their ordinary meaning. However, the staff's "common sense definition" argument is directly contrary to the "plain meaning rule" which is codified in the California Code of Civil Procedure as follows: "In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, *not to insert what has been omitted*, or to omit what has been inserted . . ." See Cal. Civ. Proc. Code § 1858 (emphasis added). "Replacement" has been very clearly and specifically omitted from Section 40406, and that ends the analysis under the "plain meaning rule." Staff's argument violates that rule by seeking to insert "replacement" where it simply does not exist. Furthermore, staff's interpretation leads to the absurd result that ***any*** word not specifically excluded from a definition is included.

ii) *"Control Options" Connote "Retrofits;" Not "Replacements"*

Use of the phrases "control option" and "control options" in HSC Section 40920.6 is informative. Those phrases are used elsewhere in HSC Division 26, which pertains to Air Resources, in ways that make it clear that they refer to emission controls to be applied to the underlying source (i.e., retrofits). For example, Section 40440.11(a) provides:

> "In establishing the best available control technology . . . the south coast district shall consider only *control options* or emission limits *to be applied to the basic production or process equipment* existing in that source category or a similar source category." (emphasis added).

Thus, when HSC Section 40920.6 uses the phrases "control option" and "control options" repeatedly to specify the procedures the SCAQMD is required to follow when establishing BARCT standards it is referring to measures *to be applied to* the emitting source, not replacement of the emitting source in its entirety.

iii) When The Legislature Means "Replacement," It Says "Replacement"

There are many provisions in Division 26 where the terms "replace" or "replacement" are used, indicating that when the legislature means "replace" it states so explicitly. Furthermore, the terms "replace" and "replacement" are frequently used in conjunction with "retrofit" or terms similar to "retrofit," such as "modify" or "alter" (or variations thereof). This makes it clear that there is a distinction between actions that result in changes to an existing emissions source, and actions that result in its elimination altogether.

For example, Section 43021(a) provides:

> ". . . the retirement, *replacement*, *retrofit*, or repower of a self-propelled commercial motor vehicle . . . shall not be required until the later of the following:" (emphasis added).

Similarly, Section 44281(a) which identifies projects eligible to participate in the Carl Moyer Program, provides:

> "Emission-reducing *retrofit* of covered engines, *or replacement* of old engines powering covered sources with newer engines . . ." (emphasis added).

Use of the term "replacement" in the provisions cited above illustrates that when the legislature means "replacement" it states so explicitly. Furthermore, use of both "replacement" and "retrofit" illustrates that the legislature intends to distinguish between the two terms, and that "retrofit" does not encompass "replacement" as suggested by staff's interpretation of the definition of BARCT. If staff's interpretation was correct, then the use of both terms in the cited provisions would be redundant. Generally, if the legislature chose to include language, it must be given some meaning, and statutes are to be interpreted in a manner that avoids rendering some words surplusage, null and/or absurd. See Ingredient Communications Council, Inc. v. Lungren, 2 Cal. App. 4th 1480, 1492, 4 Cal. Rptr. 2d 216, 224 (3d Dist. 1992), rev. denied (April 23, 1992).

iv) The Legislature Has Defined "Retrofit" And Distinguished It From "Replacement"

Finally, Division 26 includes a specific definition of "retrofit" in Sections 44275(a)(19) and 44299.80(o), which provide:

> "Retrofit" means making modifications to the engine and fuel system so that the retrofitted engine does not have the same specifications as the original engine.

This definition makes clear that in the case of a "retrofit," the existing emissions source continues to exist following the retrofit, but in an altered state. Furthermore, while Division 26 does not include a definition of "replacement," it frequently makes distinctions between the terms "retrofit" and "repower," which is defined in Sections 44274(a)(18) and 44299.80(n) (immediately preceding the definition of "retrofit") as follows:

> "Repower" means *replacing* an engine with a different engine."

Thus, in the context of Division 26, "repower" and "replace" are synonymous, and very specifically and explicitly distinguished from "retrofit." The legislature was very deliberate in its use of these terms throughout Division 26 of the HSC. To suggest, as staff does, that "retrofit" as used in Section 40406, implicitly encompasses "replacement" flies in the face of the numerous distinctions between these terms made in the statute, and violates accepted rules of statutory construction.

c. Distinguishing *American Coatings*

There is nothing in the holdings of the *American Coatings* decision that supports the proposition that BARCT may include replacement of the emitting equipment in its entirety; that question wasn't even before the court. Furthermore, even if the decision supported staff's position in some manner, which it does not, it would be distinguishable based on the fundamental differences between SCAQMD Rule 1113, which was the subject of the case, and the BARCT rules currently under development to replace the RECLAIM program.

SCAQMD Rule 1113 regulates architectural coatings, which are paints and other coatings applied to buildings and homes typically with brushes, rollers or sprayers. The Rule 1113 control strategy is reformulation of the regulated coatings over time to reduce the VOC content. The rule does not impose limits on emitting equipment that produces the architectural coatings or require emission control equipment (i.e., hardware) which is not required by, or even mentioned in the rule. In contrast, the BARCT rules currently under development to replace the RECLAIM program would impose emission limits on the actual process and/or production equipment to be achieved through add-on emission control equipment (or, according to staff's current theory, replacement of the process of production equipment). There are fundamental differences between these two types of rules that make it impossible to draw any parallels between them. Thus, even if there was something in the *American Coatings* decision that supported staff's position, and again there is not, it would be of no relevance to the rules currently under development.

In the case of coatings reformulation, the control strategy involves research and development that can be undertaken completely independent of ongoing production. The work is

undertaken in laboratories, and ongoing production processes and equipment are unaffected. Once the reformulated coating has been developed, production switches to the new coating with no need to modify the production equipment, and in most cases, no lost production time. Thus, there is little or no risk to ongoing production while the control strategy is implemented or if the control strategy proves to be infeasible (i.e., effective reformulations that meet the lower limits cannot be developed). Furthermore, while coating reformulation can require a significant investment of time and money, it does not typically involve the manufacture of modified production equipment or new add-on controls, permitting required to modify or install emitting or control equipment, or physical installation of modified or new equipment.

By contrast, the control strategies here rely on physical modification(s) of emitting equipment and/or installation of new add-on control equipment, which also typically involve a research and development stage, also require the manufacture of new equipment, permitting prior to commencing installation of the new equipment, and a physical modification or installation process. Consequently, the lead times and costs associated with implementing this type of control strategy are significantly longer and higher. Furthermore, implementation of such strategies can seldom be accomplished without significant disruption to the operation of the facility, particularly at complicated and complex facilities such as those currently covered by the RECLAIM program. And if the control strategy proves to be ineffective in achieving desired emission levels, significant investments of time, money, and lost production may have been for naught, while at the same time disrupting/altering/impacting the facilities' ongoing processes/operations.

Trying to draw any parallels between a "technology-forcing" reformulation rule, such as SCAQMD Rule 1113, and the "landing rules" currently under development misses the fundamental differences between these two types of BARCT rules. Based on these factual differences, the outcome of the *American Coatings* case has no application to the current BARCT rules. Furthermore, as stated at the outset, staff has not drawn any parallels that would support its position that BARCT standards may compel replacement of the underlying production equipment even if such parallels could be drawn.

6. Cost-Effectiveness Analysis

a. Staff's Cost-Effectiveness Methodology Does Not Satisfy Requirements For Incremental Cost-Effectiveness

HSC 40920.6(a)(3) clearly requires SCAQMD to calculate the *incremental* cost-effectiveness of the technically feasible BARCT options. This section of the regulation states the following:

> *(3) Calculate the incremental cost-effectiveness for the potential control options identified in paragraph (1). To determine the incremental cost-effectiveness under this paragraph, the district shall calculate the difference in the dollar costs divided by the difference in the emission reduction potentials between each progressively more stringent potential control option as compared to the next less expensive control option.*

The incremental cost-effectiveness calculations use the costs and emission reductions associated with each progressively more stringent control option. Incremental cost analysis often results in substantially higher costs per ton of pollutant reduced and can demonstrate the diminishing returns when applying additional controls (and costs) with a limited NOx reduction benefit. SCAQMD needs to perform that analysis and provide a summary of SCAQMD's incremental cost-effectiveness analysis addressing the technical feasibility and associated costs for each NOX control option being proposed in new landing rules. The incremental cost-effectiveness analysis needs to be considered when determining BARCT per HSC 40920.6.

b. Staff's Useful Life Assumption Results In Artificially Low Cost-Effectiveness Estimates

The 2015 NOX RECLAIM amendments assumed a 25-year control equipment useful life.[4] Now, only five years later, SCAQMD is proposing that these same controls need to be retrofit further and that the new controls will again have a 25-year useful life. Air quality regulations typically require facilities to modify and/or retrofit existing NOX control equipment more frequently than 25 years. Therefore, SCAQMD's use of a 25-year useful life is inappropriate. To align with SCAQMD's more frequent rulemaking, SCAQMD should revise the assumed control equipment useful life assumption to 10-15 years.

c. SCAQMD Discounted Cash Flow (DCF) Cost-Effectiveness Calculations Are Not Appropriate

SCAQMD staff calculated cost-effectiveness using a DCF methodology result in projected costs that are less than those produced by the levelized cash flow (LCF) methodology used by CARB, most other California air districts and the U.S. EPA. Staff should use the LCF method for cost-effectiveness calculations.

d. The Cost-Effectiveness Analysis Must Include Costs Associated With Controlling Co-Pollutants

SCAQMD has acknowledged that particulate matter (PM) emissions (both PM10 and PM2.5) are a byproduct of installing selective catalytic reduction (SCR) . To the extent that such increases in PM trigger the requirement to install PM best available control technology (BACT) during the permitting process, the costs of complying with that requirement must be included in the cost-effectiveness analysis for the proposed BARCT standards. For example, SCAQMD has indicated that PM BACT for refineries could be 30 ppm sulfur in refinery fuel gas. SCAQMD staff has acknowledged in Working Group Meetings that the costs associated with sulfur removal

[4] Final Socioeconomic Report for Proposed Amendments to Regulation XX. Accessed at http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/regxx/12_attachh3-2015dec_reclaim_final_socioecon.pdf in November 2020.

in refinery fuel gas would be incorporated into NOx BARCT cost-effectiveness calculations.[5] RFG agrees with this approach.

e. The Cost-Effectiveness Threshold Is A Not-To-Exceed Limit

The Draft Transition Plan refers to the 2016 AQMP average cost-effectiveness threshold of $50,000 per ton of NOx reduced as a "guide" for evaluating the cost-effectiveness of proposed BARCT standards (p. 3-2). The cost-effectiveness threshold established by the Governing Board in the 2016 AQMP is not a "guide" – it is a threshold that is not to be exceeded. Therefore, SCAQMD staff must demonstrate an emission control proposal is below this cost-effectiveness threshold in order for that proposal to constitute BARCT.

7. New Source Review

a. Offset Generation Protocols

RFG generally supports staff's proposals for revising certain aspects of existing offset generation protocols as set forth in Chapter 6 of the Draft Transition Plan, including:

- Replacing the current BACT discount with a BARCT discount (p. 6-3)
- Allowing offsets to be based on emissions during any consecutive two-year period within the five-year period preceding the date of application (p. 6-4)
- Removing the usage factor (p. 6-5)

b. Seeding Of Large Source Bank

RFG opposes the proposal to suspend private emission reduction credit generation as a means of accelerating the seeding of the proposed large source bank (p. 5-3). Based on information provided at the January 21, 2021 Regulation XIII Working Group meeting, we understand that this proposal has been abandoned.

The Draft Transition Plan identifies concerns regarding the impact that seeding the large source bank could have on the supply of offsets available in the existing internal bank (p. 5-4). We note that the margin between anticipated demand and supply for internal bank offsets is considerably larger than the margin between demand and supply for large source bank offsets (p. 5-4). As a result, these concerns may be unwarranted.

c. Federal Applicability Test

RFG is supportive of staff's proposed approach for incorporating the federal NSR applicability test into Regulation XIII by reference (p. 7-3).

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[5] SCAQMD, Presentation for the PR1109.1 Working Group Meeting, August 2020.

d. Conversion Of RTCs To ERCs

RFG opposes staff's proposal to prohibit the conversion of any existing RTCs to ERCs (p. 7-6). At a minimum, RTCs that were created from the conversion of ERCs at the commencement of the RECLAIM program should be converted back.

8. Co-Pollutant Issues

a. Ammonia Slip Limits

RFG supports staff's proposal to establish ammonia slip limits at the time of permitting, as opposed to during the landing rule development process, provided that rulemaking staff takes into account the impact that subsequently imposed ammonia slip limits will have on the ability to achieve the proposed NOx standards (p. 7-5). The inherent trade-off between these two pollutants may result in combinations of emission limits that are not achievable, or not at the costs identified by staff during the rulemaking process. Even if ammonia slip limits are imposed through permit conditions, as opposed to including them in the rule, the ammonia emissions are still being driven by the proposed NOx BARCT standards and must be taken into consideration during the rulemaking process, including consideration of the costs associated with the PM controls in the cost-effectiveness analysis for the NOx BARCT controls.

b. PM BACT

RFG supports developing an approach for avoiding triggering PM10 BACT as a result of increased PM emissions associated with installation of NOx controls and has offered a number of possible solutions to this problem.[6] Staff provided an overview of its current proposed approach (p. 7-4) at the Regulation XIII Working Group meeting on January 21, 2020, but significant details associated with the proposal remain to be developed. RFG looks forward to working with staff to determine whether or not the current proposal can be developed into a workable solution that meets applicable legal requirements.

9. Alternative Emission Control Plans

The Draft Transition Plan should include discussion of available alternatives to equipment-by-equipment BARCT standards. HSC Section 40920.6(f) provides for this flexibility and states that districts "…shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar amount per ton reduced…." Following are some of the key constructs that industry recommends for consideration in the development of alternative emission compliance plans (AECPs). Other approaches may be appropriate as well.

[6] See April 21, 2020 comment letter on this subject.

a. Scope and Applicability

Facilities under the same ownership should be eligible to be considered as one entity for compliance purposes. SCAQMD Rule 2002 provides appropriate language to define "same ownership" that could be incorporated into landing rules, including proposed Rule 1109.1: "For the purposes of this rule, same ownership is generally defined as facilities and their subsidiaries or facilities that share the same Board of Directors or shares the same parent corporation."

b. Form of the AECPs

At a minimum, mass-based caps covering all facilities under the same ownership as one acceptable form of AECPs. Landing rules should also provide for flexibility that allows facilities to propose the best form of AECP for their specific operations. To establish the baseline for a facility cap, facilities should be able to evaluate each unit under the same ownership for the previous five years (e.g., 2015 – 2019) to choose the appropriate production baseline year for each piece of equipment.

c. BARCT Targets

AECPs should include emission reduction targets equivalent to the 2015 NOx shave requirements through 2022. Additional target(s) beyond 2022 could be established based on the BARCT concentration requirements and timeline promulgated in applicable landing rules. The BARCT limits for each piece of equipment would be converted to mass limits based on the selected baseline year and then summed for the entire group of facilities to establish the total annual emissions cap. Future amendments to landing rules to reflect advances in BARCT would be treated similarly via a reduction in the emissions cap in the AECP.

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We appreciate your attention to the issues addressed in this letter, and we look forward to discussing them further with you and members of the District rulemaking and permitting groups. If you have any questions, please do not hesitate to call me at (714) 755-8105 or email me at michael.carroll@lw.com.

Best regards,

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