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August 18, 2016

Attention: Philip M. Fine, PhD
Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Enforcement Concerns Related to the Proposed Shutdown Provision

Dr. Fine,

We are writing to express our concerns and raise potential issues relating to enforcement of the proposed Shutdown Provision (Rule 2002 (i)).

Paragraph (i)(5) of the July 21, 2016 version of the Shutdown Provision states:

“If any RTCs that would have been reduced from the adjusted initial allocation pursuant to paragraph (i)(1) have been sold prior to the reduction, the Facility Permit Holder shall purchase and retire sufficient RTCs to fulfill the entire reduction requirement.”

Many potential situations may arise where RECLAIM market participants may sell initial allocations prior to shutdown, including a sale of IYBs to fund pollution control projects. It is our understanding such companies under Paragraph (i)(5) would be required to purchase the volume requirements of Paragraph (i)(1) from the open market and then surrender these volumes to the SCAQMD.

1. In instances of bankruptcy, would the SCAQMD become a creditor due to a failure to surrender RTCs? If so, how would the SCAQMD value RTCs under such a situation?
2. Historical trading of Infinite Year Block (IYB) RTCs shows there are periods in the RECLAIM market where there are insufficient or simply no available IYB streams to meet demand. In these circumstances, companies meeting Paragraph (i)(5) criteria would not be able to secure sufficient RTCs for the surrender requirement. How would the SCAQMD enforce the provision in the event there are insufficient RTCs available? Would the SCAQMD require the RECLAIM facility to pay a fine equivalent to the market price of the surrender volume requirements? If so, how would those potentially substantial funds be appropriated?

Without defining a clear, universally applicable method for calculating the monetary value of the RTC surrender requirements, in the likely event that RTCs are unavailable to purchase, the above examples represent realistic challenges in the enforcement of the Shutdown Provision.

Best Regards,

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