



August 17, 2016

VIA E-MAIL

Mr. Gary Quinn, P.E.
Planning, Rule Development and Areas Sources
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Proposed Amendments to Rule 2002; NOx RECLAIM Facility Shutdowns

Dear Mr. Quinn:

On behalf of the Southern California Air Quality Alliance I am submitting these comments on the SCAQMD staff proposal regarding amending Rule 2002 to address issues related to facility shutdowns and RTC usage following such shutdowns. The presentation and discussion at the NOx RECLAIM Working Group meeting on August 9 brought a number of issues to the fore which will need to be resolved before the amendments go before the SCAQMD Governing Board. I will address the issues, as we see them, separately below.

Exemption for Facilities Under Common Ownership

It is critical to our members that this exemption be worded appropriately to assure that existing facilities that are under common ownership (and have been for many years under the RECLAIM program) retain their ability to move RTCs between facilities without penalty. It is our understanding that SCAQMD is concerned that a RECLAIM facility operator could purchase another RECLAIM facility for the purpose of shutting it down and then using the RTCs to avoid implementing BARCT. This concern does not apply to facilities that have been under common ownership for many years prior to the current concerns about use of RTCs generated as a result of shutdowns. As you have heard during the working group meetings, the proposed use of a six digit NAICS designation does not do that, as numerous facilities currently under common ownership do not have the same six digit NAICS designation. Perhaps a less restrictive classification code would work, but we believe that there needs to be a way to grandfather in RECLAIM facilities that have been under common ownership for many years. A simple solution could be to allow the exemption to apply facilities under common ownership on or before a date certain (e.g., the hearing date on these rule amendments). For those facilities coming under common ownership after that date, some type of common commercial interest would be required as well as a substantial or controlling ownership interest.

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Related to this issue is the use of the transferred RTCs. In our view RTCs (including those arising from facility shutdowns) should be transferable without discount between and among commonly owned facilities meeting the exemption requirements. The use of these credits by the commonly owned facilities should

not be restricted. The transfer to third parties of credits arising from shutdowns could be subject to restriction or use limitations, however.

Applicability Date for Amendments Affecting Shutdowns

As I noted at the August 9 working group meeting, subparagraph (i)(1) of Rule 2002 should contain an effective date. Language such as the following would suffice: "Any Facility Permit Holder that permanently shuts down or surrenders all operating permits for the entire facility after [Date]" I would suggest the hearing date on the proposed amendments, however if District staff is bold, I would suggest December 7, 2015 as the earliest date as this would at least relate back to the original rule amendment hearing date.

Factors Triggering Shutdown Finding

Several participants at the August 9 working group meeting noted that the provisions of subparagraph (i)(7) would allow the Executive Officer to determine that a shutdown has occurred when reported emissions are less than 10% in the previous two compliance years with limited exceptions. There are a number of reasons why emissions could decline drastically, including equipment replacement, process changes and electrification. For example, if a facility went beyond BACT by electrifying certain operations facility emissions could well be cut by 90% or more. Subjecting this to a "shutdown" determination would deter facilities from making such significant investments. Allowing those facilities to recoup their costs of going "beyond BACT" by selling RTCs to other facilities was a key feature of RECLAIM and such actions should be encouraged not discouraged. For this reason "other NOx reduction strategies" should be included as a basis for not making a shutdown determination.

Facility Notification of Shutdown Determination Process

We believe that it would benefit both the District and the RECLAIM facility operator if notification was provided early on that the facility was being considered for a shutdown determination. The facility would be able to provide information regarding why the emissions had reduced so significantly and thus be able to avoid a shutdown determination or apply for reserve status, thus avoiding the need for SCAQMD staff to work on justifying a determination that may later be dismissed.

Additionally, the current wording of subparagraph (i)(9) provides that the determination regarding shutdown is final if the Executive Officer fails to notify the facility operator within 60 days after the preliminary determination that changes to the preliminary determination have been made. Due to the severity of the shutdown provisions being made applicable to a facility, it is only proper that the Executive Officer give affirmative notice to the facility operator that the shutdown determination has been finalized. Subparagraph (i)(9) should be revised to read:

"(9) The facility shall be deemed shut down when the Executive Officer provides written notification to the Facility Permit Holder of the final determination. The Facility Permit Holder may file an appeal to the

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Hearing Board provided such appeal is filed within 30 days after the receipt of the notice of final determination.”

Application of Shutdown Provisions to Small Facilities

The work associated with analyzing pre-shutdown emissions and post-shutdown BARCT adjustments associated with small facilities (e.g., 4 tons or less) would seem to be great compared to the associated emissions (around 30 pounds per day 5 day per week operations). These are likely the credits to be purchased by structural buyers rather than facility operators seeking to avoid BARCT. Whether the cut-off is set at 4 tons per year or lower, we would recommend a “de minimis” level threshold below which the new shutdown credit provisions would not apply.

Requirement to Purchase RTCs Previously Sold Following a Shutdown

The current proposal includes a “repurchase provision.” That provision would require a facility operator that sold originally allocated RTCs so as to not have sufficient allocated RTCs at the time of the shutdown to go into the market and purchase sufficient RTCs to make up the difference between its current holdings and what it would have had had it not sold off part of its original allocation. There is no time limit regarding how far back the RTC sale had to have occurred.

We believe that there are fundamental issues of fairness and legality that arise if this proposal is adopted. The facility operator did something that was perfectly legal and accepted under the rules in effect at the time and years later is being punished for that conduct. We would suggest that this provision either be dropped or be limited to sales of RTCs after a specific date. We would suggest the date of adoption of the amendments, unless there are compelling reasons to specify a different date.

We look forward to continuing to work with you and SCAQMD staff on the rulemaking addressing the RECLAIM facility shutdown issue.

Very truly yours



Curtis L. Coleman

Executive Director
Southern California Air Quality Alliance