



Western States Petroleum Association
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VIA ELECTRONIC MAIL

August 25, 2016

Dr. Philip Fine
Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

**SUBJECT: WSPA COMMENTS REGARDING PROPOSED AMENDMENTS TO
REGULATION XX, REGIONAL CLEAN AIR INCENTIVES MARKET
(RECLAIM) NO_x RECLAIM**

Dear Dr. Fine:

Western States Petroleum Association (WSPA) is a non-profit trade association representing twenty-five companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in California, Arizona, Nevada, Oregon, and Washington. WSPA-member companies operate petroleum refineries and other facilities in the South Coast Air Basin that are within the purview of the RECLAIM program and that will be impacted by the proposed amendments regarding retirement of credits from facility or equipment shutdowns.

Thank you for meeting with me last week to discuss WSPA's August 8, 2016 comment letter. As a result, we are providing follow up comments below.

WSPA recommends the following revisions to PAR 2002 Section (i)(6) as follows:

(i) Facility Shutdowns

*(6) The requirements specified in this subdivision shall not apply to facility shutdowns where the RTCs are transferred to another facility with **integrated operations and/or under common control** as of (INSERT ADOPTION DATE).*

(a) Integrated Operations means RECLAIM Facilities which are owned or operated by the same company and whose operations are interconnected or interdependent. Integrated Operations may include RECLAIM Facilities which are located on non-contiguous properties within the District.

This would be consistent with the “common ownership or control” language contained in source/facility definitions found in existing AQMD rules (e.g., R1302, R1714, R2002, and R3000). It is also consistent with past EPA policy guidance. An explanation of “common control” could be added to the staff report. Excerpts from a 1995 USEPA letter would be useful in this regard. While this letter provides guidance on whether a new facility locating on the site of an existing major source should be considered as a single entity or two separate ones, concepts in the letter regarding common control are germane without the need for facilities to be co-located. The letter is included as Attachment 1, attached hereto and incorporated herein by reference.

For example:

“EPA’s permit regulations do not provide a definition for control. Therefore, we rely on the common definition. Webster’s Dictionary defines control as ‘to exercise restraining or directing influence over,’ ‘to have power over,’ ‘power of authority to guide or manage,’ and ‘the regulation of economic activity.’ Obviously, common ownership constitutes common control. However, common ownership is not the only evidence of control”.

WSPA reiterates its previous and unaddressed concerns from the August 8th letter here for ease of review:

1. PAR 2002 Section (i)(1) should be revised to explicitly limit adjustment of “initial NO_x allocation” to future compliance years for a facility shutdown occurring after Governing Board adoption of these proposed amendments.

PAR 2002 Section (i)(4) notes that the NO_x RTC adjustment would only apply to future compliance year RTCs. For the sake of clarity, WSPA recommends that PAR 2002 Section (i)(1) should be revised to also clearly limit the adjustment of an initial NO_x allocation to future compliance years.

WSPA recommends the following revisions to the rule language:

(i) Facility Shutdowns

(1) Any Facility Permit Holder that permanently shuts down or surrenders all operating permits for the entire facility after [INSERT ADOPTION DATE] shall have its adjusted initial NO_x allocation reduced for each future compliance year by an amount equivalent to the difference between:

(A) The average of actual NO_x emissions from the highest 2 of the past 5 compliance years for the facility; and

(B) The NO_x emissions that would have occurred in those same 2 years as if it was operated at the most stringent applicable BARCT emission factors specified in Rule 2002(f)(1)(L).

Additionally, AQMD Staff should work with RECLAIM stakeholders to develop a methodology for the calculation of adjustments to initial NO_x allocation for facility shutdowns under section (i)(1). Such a methodology will be important for facilities with multiple devices and it should provide credit (i.e., a positive adjustment) for individual devices which are outperforming BARCT emission factors as specified in Rule 2002(f)(1)(L); not just penalties (i.e., a negative adjustments) for devices which may be underperforming the specified BARCT emission factor.

2. PAR 2002 Section (i)(5) should be revised to exclude adjustments for RTCs sold prior to Governing Board adoption of these proposed amendments, and be limited to transactions recorded within five (5) years of the facility shutdown.

As proposed, PAR 2002 Section (i)(5) could, in certain cases, retrospectively penalize a company with a future facility shutdown for past a RTC transaction even if it was fully compliant with Regulation XX as applicable at the time of the transaction. We do not believe that to be appropriate. WSPA believes that PAR 2002 Section (i)(5) should be revised to exclude the possibility of adjustments for RTC transactions completed prior to the Governing Board's adoption of these proposed amendments.

WSPA recommends the following revisions to the rule language:

(i) Facility Shutdowns

(5) If any RTCs that would have been reduced from the adjusted initial allocation pursuant to paragraph (i)(1) have been sold after [INSERT ADOPTION DATE] and within the last five (5) years prior to the reduction, the Facility Permit Holder shall purchase and retire sufficient RTCs to fulfill the entire reduction requirement.

3. Board requested analysis of shutdown credit rule language should be prepared, made public and considered as part of rule development.

The December 4, 2015 Board resolution language for the NOx RECLAIM shave states that the shutdown credit rule language shall be returned "to the NOx RECLAIM Working Group for further discussion and **analysis of that proposal's potential implications on the entire NOx RECLAIM Program and consideration of possible alternatives** that would allow a closer alignment of the treatment of shutdown credits in RECLAIM and command-and-control programs **short of full forfeiture**. Following this process, staff may bring its original proposal or some other alternative back to the Governing Board for consideration for adoption."

WSPA requests that such analysis be provided. The preliminary draft staff report includes 1.5 pages at its conclusion titled Impact Assessment. However, since this section primarily refers to the analyses prepared for the December 4 Board package, it is clear that those analyses do not fulfill the request made that same day for an analysis specifically on shut down provisions.

Thank you for your consideration of these comments.

Sincerely,

