

**EAST YARD COMMUNITIES FOR ENVIRONMENTAL JUSTICE**  
**COMMUNITIES FOR A BETTER ENVIRONMENT**  
**SIERRA CLUB**  
**EARTHJUSTICE**

June 25, 2019

**VIA: ELECTRONIC MAIL ONLY**  
(mkrause@aqmd.gov)

South Coast Air Quality Management District  
Attn.: Michael Krause, Planning & Rules Manager  
21865 Copley Drive  
Diamond Bar, California 91765

**RE: Comments on Proposed Rule 1109.1 Best Available Retrofit Control  
Technology Assessment for Petroleum Refinery Equipment**

Dear Mr. Krause:

The undersigned organizations submit these comments regarding Proposed Rule 1109.1. As you know, Health and Safety Code section 40920.6 mandates that on or before December 31, 2023, the South Coast Air Quality Management District (AQMD) implement Best Available Retrofit Control Technology (BARCT) at existing pollution sources covered by a market-based program for greenhouse gas emissions reductions.<sup>1</sup> These life-saving pollution controls are necessary to protect fenceline communities, particularly in the South Coast Air Basin that remains the most polluted region in the nation.<sup>2</sup>

The South Coast AQMD's BARCT assessment will promote significant health and quality-of-life benefits for residents in the area.<sup>3</sup> For decades, Los Angeles County has received a grade of "F" for ozone and particulate matter pollution that carry serious health risks, including asthma, lung disease, lung cancer, cardiovascular disease, and diabetes.<sup>4</sup> Children, elderly, and low-income

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<sup>1</sup> CAL. HEALTH & SAFETY CODE § 40920.6; *see also* Center for Clean Air Policy, *California's AB 617: A New Frontier in Air Quality Management...If Funded* (Aug. 2, 2017), <https://ccap.org/californias-ab-617-a-new-frontier-in-air-quality-management-if-funded/>.

<sup>2</sup> Leigh Hopper, *Improved air quality leads to fewer L.A.-area kids developing asthma*, USC NEWS (May 21, 2019), <https://news.usc.edu/157209/air-quality-asthma-los-angeles/>.

<sup>3</sup> *Id.*

<sup>4</sup> State of the Air Report, California: Los Angeles, AM. LUNG ASS'N, <https://www.lung.org/our-initiatives/healthy-air/sota/city-rankings/states/california/los-angeles.html> (last visited May 30, 2019).

communities are most vulnerable to these health impacts.<sup>5</sup> For these reasons, an adequate BARCT assessment and implementation are critical to meet air quality standards and related health improvements through nitrogen oxide (NOx) emissions reductions.

To achieve these goals, the AQMD must both prioritize human health concerns and the statutory purpose of BARCT, despite refinery lobbyist demands. In particular, the South Coast AQMD should consider the following:

1. The agency must reject oil industry demands that any BARCT implementation allow for an unlawful refinery-wide emissions “bubble” approach—applying this method would be contrary to BARCT’s technology-forcing purpose and source category application, and result in refineries leaving high-polluting equipment in place;
2. The agency must reject polluter efforts to inflate cost assessments through peripheral factors that are counter to authorized “economic impacts” considerations—economic analysis must focus on the direct costs of acquiring, implementing, and operating BARCT equipment, as allowed under the Health and Safety Code; and
3. The agency must reject polluter insistence on a prolonged implementation approach to allow the highest-polluting equipment to remain in place longer—for decades, refineries abused the NOx Regional Clean Air Incentives Market (RECLAIM) to avoid implementing BARCT, burdening fenceline communities that cannot wait any longer.

These concerns are discussed in detail below. In finalizing Proposed Rule 1109.1, the South Coast AQMD should consider the issues raised in these comments. Petroleum refineries remain one of the largest stationary sources of NOx pollution in the region, yet many have artfully avoided making the necessary investments in pollution controls. The public has suffered from these failures. For these reasons, it is critical that the agency expedite the installation of BARCT to achieve long-overdue emissions reductions and save lives.

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**1. BARCT is a technology-forcing standard for “each class or category of source” that cannot be implemented using a refinery-wide emissions “bubble” approach.**

Several oil refinery lobbyists have suggested a “bubble” approach to provide refineries with “flexibility” in installing needed pollution controls to reduce NOx emissions. This approach, however, is antithetical to BARCT. As noted by the California Supreme Court, BARCT is a “technology-forcing standard designed to compel the development of new technologies to meet

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<sup>5</sup> *Id.*

public health goals.”<sup>6</sup> In establishing the standard to meet these objectives, BARCT must be determined for “*each* class or category of source.”<sup>7</sup>

By definition, an emissions “bubble” inhibits technology-forcing emissions reductions for each source category—this approach defines “a source of pollution for regulatory purposes not in terms of individual smokestacks and pieces of machinery,” but instead creates an “imaginary bubble” over the *entire* facility to allow emissions reductions “within the imaginary bubble, in the most cost-effective way.”<sup>8</sup> The purpose of this tactic is to provide polluters with flexibility to control emissions in a cost-effective (rather than health protective) manner by focusing on inexpensive, low-polluting sources.

Consequently, this imaginary “bubble” approach would allow refineries to make investments in certain low-cost controls, while leaving high-polluting equipment in place. In effect, it would recreate the problem experienced under the failed NOx RECLAIM program, which refineries manipulated to avoid investing in available pollution controls to reduce emissions. This outcome would undermine the purpose of implementing BARCT—an aggressive standard to protect community health and improve air quality in the most polluted areas—by once again allowing refineries to avoid replacing or retrofitting *all* outdated equipment to attain the maximum degree of reductions.

Oil refineries have had decades of flexibility under the NOx RECLAIM program. The time for flexibility has ceased, and BARCT should apply to all equipment.

## **2. The BARCT cost-effectiveness assessment requires consideration of direct economic investments needed to achieve emissions reductions.**

In adopting regulations to meet BARCT, the South Coast AQMD is required to determine the cost-effectiveness of each technology, meaning “the cost, in dollars, of the potential control option divided by emission reduction potential.”<sup>9</sup> In doing so, regardless of refinery lobbyist demands, the agency must limit the types of costs considered in the BARCT cost assessment to

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<sup>6</sup> *Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446, 465 (2012).

<sup>7</sup> CAL. HEALTH & SAFETY CODE § 40406; *Am. Coatings Assn.*, 54 Cal. 4th at 472.

<sup>8</sup> Jack L. Landau, *Economic Dream or Environmental Nightmare? The Concept of Legality of the “Bubble Concept” in Air and Water Pollution Control*, 8 B.C. ENVTL. AFF. L. REV. 741, 743 (1980) (emphasis added), <http://lawdigitalcommons.bc.edu/ealr/vol8/iss4/3>.

<sup>9</sup> CAL. HEALTH & SAFETY CODE § 40920.6.

“direct costs expected to be incurred by regulated parties” in the acquisition, installation, and operation of equipment and control technologies.<sup>10</sup>

Consideration of peripheral costs—including the cost of pollution controls to address co-pollutant emissions such as ammonia slips and particulate matter—would artificially inflate these calculations to promote less stringent, low-cost measures that will not achieve the maximum degree of reductions. Although we are concerned about any significant co-pollutant emissions, in accordance with staff’s past approach, these emissions should be analyzed and mitigated in the environmental assessment.<sup>11</sup>

**3. BARCT implementation must be aggressive and should not allow high-polluting equipment to remain in place under a “phased” implementation approach.**

Health and Safety Code section 40920.6 requires the South Coast AQMD to “adopt an expedited schedule” to implement BARCT “by the *earliest* feasible date, but in any event not later than December 31, 2023.”<sup>12</sup> This requirement is in line with the legislative intent of BARCT, which is to “encourage more *aggressive* improvements in air quality.”<sup>13</sup> Despite the clear statutory instruction, refinery lobbyists have insisted on a “phased” BARCT implementation that would allow for high-emitting sources to remain in place for longer—this extended timeline is not based on any financial or technological infeasibility reasons.

Allowing for a phased implementation approach should not result in unreasonable delay. For decades, under the failed NOx RECLAIM program, refineries in the region have saved millions of dollars by avoiding the installation and updates to life-saving pollution controls. At the same time, the region continues to experience the worst air quality in the nation, resulting in increased healthcare costs and death for thousands of people in the South Coast Air Basin.

The existing air quality conditions require immediate, aggressive action. Communities that have suffered the consequences to their health and welfare should not have to wait any longer to experience tangible air quality improvements. Refineries must make the necessary investments to implement BARCT well before the 2023 deadline and should prioritize the highest-emitting equipment.

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<sup>10</sup> CAL. HEALTH & SAFETY CODE § 40703; *see also*, *Proposed Amendments to NOx RECLAIM Program*, at 25, 53-154 (Dec. 4, 2015) <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2015/2015-dec4-030.pdf?sfvrsn=9> (last visited June 13, 2019).

<sup>11</sup> For instance, in the 2015 BARCT cost assessment, staff did consider the cost of ammonia and other NOx reducing additives under operating costs, but did not include co-pollutant control costs. *Id.*

<sup>12</sup> CAL. HEALTH & SAFETY CODE § 40920.6(c)(1).

<sup>13</sup> *Am. Coatings Assn.*, 54 Cal. 4th at 466 (emphasis added).

We appreciate your consideration of these comments. In finalizing Rule 1109.1, the South Coast AQMD must protect communities living near refineries and prioritize environmental health. Further, implementation of BARCT must be immediate and should require the maximum emissions reductions. Communities in the region, and in particular residents living near refineries, have waited too long.

Respectfully submitted,

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