



**Torrance Refining
Company LLC**
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January 27, 2021

VIA E-MAIL: srees@aqmd.gov

Sarah Rees, Ph.D.
Acting Deputy Executive Officer
Planning and Rules
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Comments on South Coast Air Quality Management District Staff's Revised RECLAIM Transition Plan December 2020 Released to the Public on Friday, December 10, 2020

Dear Ms. Rees,

Torrance Refining Company LLC ("TORC") is pleased to submit comments to the South Coast Air Quality Management District ("District") in response to staff's RECLAIM Transition Plan Draft Version 2.0, December 2020 released on December 10, 2020 ("Transition Plan").

CMB-05

The SCAQMD "Transition Plan" was prepared in response to the 2016 Air Quality Management Plan ("AQMP") Control Measure CMB-05 ("CMB-05"). CMB-05 identifies a series of approaches, assessments, and analyses that can be explored to make the program more effective in ensuring equivalency with command and control regulations implementing Best Available Retrofit Control Technology ("BARCT"), and to generate further oxides of nitrogen ("NOx") emission reductions at REgional CLean Air Incentives Market ("RECLAIM") facilities. In summary, CMB-05 requires the following: 1) a five (5) ton per day ("tpd") NOx emission reduction commitment as soon as feasible, and no later than 2025, and 2) a transition to a command and control regulatory structure requiring BARCT level controls "as soon as practicable." The District Staff's Transition Plan glosses over the "as soon as practicable" criteria and instead is executing BARCT level controls "as fast as possible." There is a clear difference between staff's interpretation and the CMB-05 criteria. "As soon as practicable" means to do something as soon as feasible (i.e., technologically feasible and cost-effective) whereas the District staff approach seems to require the commencement of the transition before it is actually technologically achievable on a cost-effective manner.

Before the District can transition RECLAIM to a Command and Control regime ("C&C") to meet CMB-05, the following issues must be addressed:

1. Adoption of all landing rules;
2. Amendment of Regulation XIII (New Source Review (NSR));
3. Preparation, review and comment of all supporting documents including, but not limited to, BARCT analyses, California Environmental Quality Act (CEQA); and perform a Socioeconomic analysis.

Disproportionate Impacts

It is our understanding that the United States Environmental Protection Agency ("U.S. EPA") has indicated that RECLAIM facilities will not be allowed to transition out of RECLAIM until all landing rules are adopted and Regulation XX (RECLAIM) and Regulation XIII (NSR) are amended and approved by U.S. EPA. RECLAIM facilities will need to comply with provisions of adopted RECLAIM landing rules (i.e., C&C rules) and RECLAIM. However, such overlapping requirements create disproportionate impacts for RECLAIM facilities.

Section 39616(c)(7) of the California Health & Safety Code ("H&SC") requires that the District must comply with the following in adopting rules and regulations that implement a market-based incentive program: "[t]he program *will not result in disproportionate impacts*, measured on an aggregate basis, on those stationary sources included in the program compared to other permitted stationary sources in the district's plan for attainment." (Emphasis added.) Requiring that RECLAIM facilities meet both RECLAIM and C&C rules clearly conflicts with H&SC 39616(c)(7). Accordingly, to prevent non-compliance with H&SC 39616(c)(7) and avoid creating prohibited disproportionate impacts to RECLAIM facilities, C&C landing rules adopted by the District should not become effective until the EPA has approved the transitioning of RECLAIM to a C&C regime.

Cost-Effectiveness Threshold

In the Transition Plan, District staff states that they are using the 2016 AQMP average cost-effectiveness of \$50,000 per ton of NO_x reduced as a guideline, not a threshold, to determine if achieving the BARCT NO_x emission levels are cost-effective. However, this change without any supporting basis is contrary to the Final 2016 AQMP, which established BARCT cost-effectiveness thresholds:

"The legal requirements for emission reductions to reach attainment remain, but the cost of achieving those reductions will increase as the most cost-effective controls have already been implemented. To reflect this reality, as well as inflation adjustments since the current thresholds were established, the 2016 AQMP proposes *thresholds* of \$30,000 per ton of VOC and \$50,000 per ton of NO_x for tiered levels of analysis."

(Emphasis added.)

With the cost of projects escalating, it was determined that a project cost-effectiveness threshold should be established. The threshold for NO_x was established at \$50,000 per ton and approved by the District Governing Board with the adoption of the 2016 AQMP. District Staff is stating that the threshold is now a "guideline" that can be exceeded; however, the 2016 AQMP clearly states that the threshold is a limit and BARCT NO_x projects that exceed this limit are not cost-effective.

Importantly, in context of the Proposed Rule 1109.1 ("PR 1109.1") rulemaking process and specifically in its April 30, 2019 Working Group 7 meeting presentation and at the November 4, 2020 Working Group 15 meeting, District Staff has stated that the \$50,000 per ton cost-effectiveness threshold, as approved in the 2016 AQMP, would be used in this rulemaking.

The significance of the impact of the District staff's shift in interpretation of the rule language is especially relevant as it has become apparent that the projects required to meet the BARCT NO_x limit are exceeding the cost-effectiveness threshold.

The transition from RECLAIM to a C&C regime must be affected in accordance with the framework approved, which acknowledged that cost-effectiveness is an important factor in progressing the transition. Simply stated, the cost must be one that industry can afford. TORC believes that the BARCT cost-effectiveness threshold for RECLAIM transition, including all landing rules, must follow the 2016 AQMP adopted \$50,000 per ton as the cost-effectiveness threshold, not a subjective, unapproved, and moving guideline that can be used by District staff to justify a BARCT level as cost-effective.

BARCT Incremental Cost-Effectiveness Analysis

For various landing rules, particularly PR 1109.1, District Staff has yet to complete BARCT analyses that comply with the HS&C requirements. HS&C Section 40920.6 prescribes two different cost-effectiveness analyses for BARCT rules.

1. HS&C Section 40920.6(a)(2) requires:

"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."

2. HS&C Section 40920.6(a)(3) further requires:

"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."

Although the District appears to have attempted to undertake the HS&C Section 40920.6(a)(2) cost-effectiveness analyses for some landing rules, including PR 1109.1, it has yet to complete the

required HS&C Section 40920.6(a)(3) cost-effectiveness analyses. Specifically, incremental cost-effectiveness analyses have not been properly completed and have not been compared to the \$50,000 per ton cost-effectiveness threshold. The District appears to recognize this requirement in the Transition Plan, even including a proposed calculation for incremental cost-effectiveness. However, this calculation has not been completed.

In completing these incremental cost-effectiveness analyses, the District must evaluate the costs per NOx emission reduction to the \$50,000 per ton cost-effectiveness threshold between each progressively more stringent emission control option as it compares to the next less expensive control option for each landing rule. For example, in the context of PR 1019.1, the incremental cost-effectiveness analysis for Refinery Process Heaters, must evaluate the sequencing (i.e., stacking) of progressively more stringent control options, where technologically feasible, as follows:

- Step 1: Selective Catalytic Reduction (“SCR”) at uncontrolled to 5 ppmv NOx; Completed for the 2015 RECLAIM NOx Shave and determined to be cost effective and BACT/LAER
- Step 2: SCR combined with Ultra Low NOx Burner (“ULNB”) at 5 ppmv to 2 ppmv NOx.

In its August 12, 2020 PR 1109.1 Working Group 13 meeting presentation, the District showed that the “Cost-Effectiveness” to reduce NOx emissions from 5 ppmv to 2 ppmv for existing Process Heaters was \$200,000 per ton NOx emissions reduced. However, this analysis must also be applied for the incremental cost-effective analysis for Step 2 above. When applied and compared to the \$50,000 per ton cost-effectiveness threshold, the analysis would demonstrate that the BARCT 2 ppmv NOx level is not cost-effective for Process Heaters. According to HS&C Section 40920.6, the District is required to perform *both* cost-effectiveness evaluations and determine if a proposed BARCT NOx level is cost effective. The District would then need to re-evaluate the proposed BARCT NOx levels in PR 1109.1 because 2 ppmv NOx has been evaluated and it was determined that it is not incrementally cost effective for any size Process Heater.

Equipment Replacement vs. Retrofit

In the RECLAIM Working Group Meeting on July 12, 2018 and the July 2018 Draft Staff Report in support of proposed amendments to SCAQMD Rule 1135, District staff took a position that BARCT may require total replacement of the emitting piece of equipment. This was contested in two letters from Latham & Watkins dated August 15, 2018 and August 24, 2018. The Transition Plan has an interpretation that the term “retrofit” does not preclude the entire replacement of RECLAIM equipment. The District bases this interpretation largely on the on-line Merriam-Webster Dictionary definition of retrofit:

“1: to furnish (something, such as a computer, airplane, or building) with new or modified parts or equipment not available or considered necessary at the time of manufacture, 2: to install (new or modified parts or equipment) in something previously manufactured or constructed, 3: to adapt to a new purpose or need: modify.”

Such a definition requires that there be existing equipment to “furnish” or “install” new or modified parts. As a result, this creates a non-sequitur. For example, if a Refinery is required to replace an existing Process Heater with a new heater to meet the proposed PR 1109.1 BARCT NO_x levels, then there would be no existing heater remaining, and therefore, no Process Heater to retrofit.

In the Transition Plan, the District citing *American Coatings Ass'n v. South Coast Air Quality Management District*, 54 Cal 4th 446 (2012) (“*American Coatings*”), asserts that BARCT is a “technology-forcing standard designed to compel the development of new technologies to meet public health goals.” However, the District misstates *American Coatings* as the forcing of “emerging technologies” is inappropriate as “BARCT standards, by contrast [to BACT], are generally applicable rules that require full compliance at some future date, usually several years after a rule is adopted.” *Id.* at 467 (citations omitted).

Notably, during PR 1109.1 Working Group 10 meeting on February 18, 2020, District staff stated that Best Available Control Technology (“BACT”) for Process Heaters was 5 ppmv NO_x, and that for major sources, **Lowest Achievable Emission Rate** (“LAER”) is BACT. However, in contradiction to this, the District staff has indicated that the BARCT NO_x level for existing Process Heaters is 2 ppmv, which is lower than BACT/LAER for new Process Heaters, which as previously mentioned is 5 ppmv NO_x.

The District’s position that an existing Process Heater can achieve 2 ppmv NO_x even though the BACT/LAER for a new Process Heater is 5 ppmv NO_x somehow assumes that retrofit technology is commercially available for an existing Process Heater to meet 2 ppmv NO_x. If such technology is not available, as PR 1109.1 is currently drafted, the only option that a Refinery would have is to replace the Process Heater and/or shutdown the related Process Unit. Such an option has not been included in the District’s PR 1109.1 BARCT cost-effective analysis to date for Process Heaters. However, if it were included, the analysis would show that such an option is not cost-effective. Yet, another reason why equipment replacement is not retrofit.

TORC supports WSPA’s prior comments regarding NSR and emission offsets. The impact to all RECLAIM facilities under NSR and the availability of offsets will need to be addressed before transition can be completed, which must be considered in any RECLAIM transition timing.

* * *

In closing, TORC urges the District not to proceed with the transition from RECLAIM to C&C until the foregoing issues have been resolved. Specifically, the District should: 1) reconsider how to apply the BARCT cost threshold; 2) reevaluate the BARCT analysis to address incremental costs and/or replacement costs; and 3) condition the effectiveness of the landing rules upon full EPA approval of the RECLAIM transition.

The proper transition of the RECLAIM program to C&C regime particularly as it relates to the Refining sector requires that reasonable deadlines allowing sufficient time to properly develop the PR 1109.1 landing rule to establish BARCT levels for targeted Refinery equipment at the affected Refineries that are technologically feasible and cost-effective as required by law.

Thank you for the opportunity to submit comments on the RECLAIM Transition Plan. We stand ready to work diligently with District staff and other stakeholders to establish an appropriate timeline for the implementation of the Transition Plan and the PR 1109.1 rulemaking process as we move forward in addressing the complex underlying issues.

Please note that in submitting this letter, TORC reserves the right to supplement its comments as it deems necessary, especially if additional or different information is made available to the public regarding the Transition Plan and/or PR 1109.1 rulemaking process.

If you have any questions regarding TORC's comments, please call or email me or John Sakers. Our office phone numbers are 310-212-4500 (Steve) and (310) 212-4292 (John).

Sincerely,



Steve Steach
Refinery Manager

cc: **District Staff - via e-mail and overnight delivery**

Wayne Nastri	Executive Officer
Susan Nakamura	Assistant Deputy Executive Officer
Michael Krause	Planning and Rules Manager
Gary Quinn, P.E.	Program Supervisor
Isabelle Shine	Air Quality Specialist

cc: **District Refinery Committee Members - via e-mail and overnight delivery**

Dr. William A. Burke	Governing Board Chair
Hon. Ben Benoit	Governing Board Vice-Chair and Refinery Committee Member
Hon. Larry McCallon	Governing Board Member and Refinery Committee Chair
Hon. Judy Mitchell	Governing Board and Refinery Committee Member
Hon. Lisa Bartlett	Governing Board Member and Refinery Committee Member

Sarah Rees, Ph.D.
January 27, 2021
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**Re: South Coast Air Quality Management District's RECLAIM
Transition Plan**

cc: **District Governing Board Members - via overnight delivery**

Hon. Sheila Kuehl	Governing Board Member
Hon. Joe Buscaino	Governing Board Member
Hon. Michael A. Cacciotti	Governing Board Member
Hon. Vanessa Delgado	Governing Board Member
Hon. Gideon Kracov	Governing Board Member
Hon. V. Manuel Perez	Governing Board Member
Hon. Carlos Rodriguez	Governing Board Member
Hon. Janice Rutherford	Governing Board Member