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Director, Southern California Region

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South Coast Air Quality Management District
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Via e-mail at: snakamura@aqmd.gov

Re: WSPA Comments on the SCAQMD RECLAIM Transition Plan, Version 2.0

Dear Ms. Nakamura,

Western States Petroleum Association (WSPA) appreciates the opportunity to participate in the Working Group Meetings (WGMs) for the South Coast Air Quality Management District's (SCAQMD or District) project to transition facilities in the Regional Clean Air Incentives Market (RECLAIM) program for NO_x emissions to a command-and-control structure (i.e., the "RECLAIM Transition Project"). WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport, and market petroleum, petroleum products, natural gas, and other energy supplies in five western states including California. WSPA has been an active participant in air quality planning issues for over 30 years. WSPA-member companies operate petroleum refineries and other facilities in the South Coast Air Basin that are within the purview of the RECLAIM Program administered by the SCAQMD. WSPA-members' facilities will be impacted by the RECLAIM Transition Project.

On December 10, 2020, SCAQMD released a second draft of its *RECLAIM Transition Plan* (Draft Version 2.0); the first version having been released in March 2018. WSPA offers the following comments on the revised Transition Plan which have been organized by chapter:

1. Chapter 2: Rule Development for Landing Rules/Overview of Rulemaking Approach

On page 2-2, the District notes U.S. EPA's position that RECLAIM facilities will not transition out of the NO_x RECLAIM program until all best available retrofit control technology (BARCT) landing rules and amendments to Regulation XX and Regulation XIII rules have been adopted by the District Governing Board and approved by U.S. EPA. The District further notes that this will result in RECLAIM facilities needing to comply with provisions in command-and-control BARCT landing rules while still being subject to NO_x RECLAIM's market-based rules.¹

WSPA agrees that NO_x RECLAIM facilities cannot be removed from Regulation XX until a complete set of rules for the NO_x RECLAIM Transition Project have been adopted by the District and fully approved by U.S. EPA into the State Implementation Plan (SIP). This will result in a

¹ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 2-2.

prolonged period of NO_x RECLAIM facilities being regulated under Regulation XX's market-based structure while simultaneously being forced to meet new command-and-control rules which are not SIP-approved. WSPA is very concerned that such "double regulation" will impose an unnecessary regulatory burden and is without any demonstrated environmental benefit.

California Health & Safety Code section 39616(c) states that in adopting rules and regulations to implement a market-based incentive program ... "The 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." Requiring NO_x RECLAIM facilities to simultaneously comply with both RECLAIM and command and control BARCT rules would appear to conflict with the statute. As such, the landing rules should not be enforceable until after the District has met the U.S. EPA's requirements to complete the NO_x RECLAIM transition.

2. Chapter 2: Rule Development for Landing Rules/Monitoring, Reporting, and Recordkeeping

The District notes: "Where there are differences, additional analysis will be needed recognizing that RECLAIM is based on mass emissions and the command-and-control rule is based on the NO_x concentration or emission rate, and certain monitoring and reporting requirements may be less stringent under a command-and-control regulatory approach."²

WSPA agrees that the NO_x RECLAIM Transition Project will necessitate the MRR changes described in this section. Proposed Amended Rules 218 and 218.1, and Proposed Rules 218.2 and 218.3 (the "PR218.x Package") will contain these continuous emissions monitoring system (CEMS) requirements. WSPA strongly recommends that changes to the CEMS requirements should be fully reconciled before the Governing Board is asked to consider the PR218.x Package. The R218.x rules must also include a mechanism for the eventual transition of MRR compliance from NO_x RECLAIM's Rule 2012 to the PR218.x command-and-control requirements.

3. Chapter 2: Rule Development for Landing Rules/Implementation Schedules and Emission Reductions

The Plan states: "Staff is currently working on the implementation schedule for Proposed Rule 1109.1 for refinery and refinery related operations. Staff is developing a phased implementation approach that will seek more reductions in the first phase. The implementation approach for PR 1109.1 will go beyond January 1, 2024 as many of the petroleum refineries have many complex projects that requiring a combination of burner replacements and installation of selective catalytic reduction (SCR). Each project will have capital expenditures over \$10 million, and time is needed to sync projects within the refinery turnaround schedules. Staff believes it is critical to take these considerations into account to provide the time for the refineries to achieve the proposed NO_x BARCT limits."³

WSPA agrees that PR1109.1 implementation must to be synchronized around turnaround schedules.

² SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 2-4.

³ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 2-6.

4. Chapter 2: Rule Development for Landing Rules/Emission Reductions from Adopted or Amended Landing Rules

Figure 2-1 purports to present “*Estimated NO_x Emission Reductions from RECLAIM Facilities for Adopted or Amended Landing Rules.*” Figure 2-1 is very misleading because most (maybe all) of the reductions cited have already been claimed for SIP credit under December 2015 amendments to Regulation XX. Under that rulemaking, the District claimed 12 tons per day (tpd) of reductions for the current NO_x RECLAIM “shave.” Those already claimed reductions are occurring through 2022. As such, little (maybe none) of the amounts presented in Figure 2-1 will be creditable.

5. Chapter 3: BARCT Determination Process/ BARCT Analysis Process

The plan states: “The cost-effectiveness of achieving the initial NO_x emission limit is then analyzed. Staff uses the 2016 AQMP average cost-effectiveness of \$50,000 per ton of NO_x reduced as a guide to determine if achieving the initial BARCT NO_x emission limit is cost-effective.”⁴

WSPA notes that \$50,000 is not a guide. Rather, it is the cost effectiveness threshold and the 2016 AQMP describes it as such:

“The 2012 AQMP established \$16,500 per ton of VOC and \$22,500 per ton of NO_x as the 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.” [2016 AQMP, page 4-54, emphasis added]

A threshold is a level above which something is true and below which it is not true.⁵ Therefore, the District must demonstrate an emission control proposal is below this cost effectiveness threshold in order for that proposal to be determined as BARCT.

WSPA also notes that the District has not completed all of the cost effectiveness analyses required under the California Health & Safety Code. H&SC 40920.6 prescribes two different cost effectiveness analyses for BARCT rules.

- 40920.6(a)(2) “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.” AND

⁴ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 3-2.

⁵ See Merriam-Webster online dictionary.

- 40920.6(a)(3) "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."

While the District has presented the stakeholders with 40920.6(a)(2) analyses for the different landing rules, stakeholders have not been presented any information concerning the 40920.6(a)(3) analyses. This is interesting given that the revised RECLAIM Transition Plan outlines the methodology for calculating incremental cost-effectiveness.

Such incremental cost-effectiveness analyses are intended to evaluate the cost per emission reduction for each progressively more stringent control option as compared to the next less expensive control option. Since the District is required to perform both cost effectiveness evaluations to determine to establish a BARCT standard, the District must include both in its evaluation of proposed BARCT limits.

6. Chapter 3: BARCT Determination Process/ South Coast AQMD's Authority to Base a BARCT Emission Limit on Equipment Replacement

The plan presents the District's position that the term retrofit does not preclude the replacement of the entire device. WSPA strongly disagrees. We will address our legal concerns under separate cover.

7. Chapter 4: Overview of New Source Review Program

In Chapter 4, the District presents information concerning the District's two New Source Review (NSR) programs and the many complicated problems caused by the Staff's proposed transition of NO_x RECLAIM facilities from Regulation XX NSR (contained in Rule 2005) to Regulation XIII NSR. WSPA again notes that neither the Governing Board resolution authorizing a transition to command and control rules nor California's Assembly Bill 617 (AB617) directed any such changes to the NSR programs. This decision by Staff to transition away from NO_x RECLAIM NSR would effectively cause the District to re-write the entire NSR program for both NO_x RECLAIM facilities as well as all other (non-RECLAIM) facilities permitted by the District. Such NSR program changes are beyond the scope of the Board and AB617 direction to transition to command-and-control rules.

8. Chapter 4: Overview of New Source Review Program/ Current Supply of Offsets in the Open Market and Internal Bank

Having a functional NSR program in the SCAQMD is critical to regional economy as businesses are regularly required to obtain District permits for new and modified facilities. Under the District's NSR programs, offsets are often required for such permits. The revised RECLAIM

Transition Plan describes the NSR emissions offsets considerations, and the potential problems caused by Staff's decision to transition away from NO_x RECLAIM NSR.⁶ WSPA is very concerned that, while the problems have been well described, the Transition Plan provides no viable solutions to those problems. In fact, the current policy trajectory seems more likely to exacerbate the current offsets supply shortages for non-RECLAIM facilities while causing an entirely new supply problems for facilities currently in the NO_x RECLAIM program. Since the NSR program changes are outside the directives to transition to command-and-control rules, District Staff should reconsider that policy choice.

9. Chapter 5: Ensuring Availability of Offsets Post-RECLAIM

In Chapter 5 of the Transition Plan, the District presents a number of concepts for addressing post-RECLAIM concerns with availability of emissions offsets. Included in this discussion is the concept of a "Large Source Bank." If the District continues with the proposed elimination of RECLAIM NSR (i.e., Rule 2005), WSPA supports the concept of a Large Source Bank as a possible mechanism for ensuring a functional NSR program. We are concerned about whether the District will be able to generate an adequate supply of creditable offsets to seed the Large Source Bank. For this reason, we believe it important that any proposed design be vetted and approved by U.S. EPA before adoption of amendments to Regulation XIII or Regulation XX.

Also, the draft plan presented an option to temporarily suspend facilities' ability to generate ERCs (i.e., Open Market ERCs) "to allow more emission reductions to be directed to the Large Source Bank."⁷ District staff have more recently indicated that they will not pursue such an option.⁸ WSPA agrees with that decision, believing such a prohibition would actually have disincentivized facilities from generating new, creditable emission reductions.

10. Chapter 7: NSR Issues Related to the RECLAIM Transition/Co-Pollutant Emissions from Installation of SCR on Refinery Equipment

The revised Transition Plan notes: "U.S. EPA agrees that if the modification does not exceed the federal significant emission rates, that major new source review would not be required. Initial estimates indicate that the increase in particulate matter emissions would likely be below federal major modification thresholds which are 15 ton per year for PM₁₀ and 10 tons per year for PM_{2.5}. Under this approach, a demonstration is still needed to show that there is no backsliding under SB 288. CARB staff did identify that other air districts throughout California have a provision that exempts sources from meeting BACT when complying with a BARCT requirement. It is staff's understanding that the objective is to ensure BACT does not interfere with the ability of a region to achieve air quality requirements that can only be achieved through the implementation of BARCT requirements. Staff is continuing to work with U.S. EPA and CARB to evaluate potential

⁶ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 4-4.

⁷ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 5-3.

⁸ SCAQMD Regulation XIII Working Group, January 21, 2021.

options on how to evaluate these types of projects and a potential path forward in the event SB 288 is triggered.”⁹

WSPA appreciates the District Staff’s work to identify a solution to this novel issue. But as the District notes, this significant policy issue is not resolved, and it would materially impact BARCT determinations under PR1109.1. Based on the SCAQMD’s 2020 Fuel Gas Treatment Survey (2020 FGT Survey), we understand the projected refining industry costs for further RFG desulfurization were estimated to be **at least \$1.4 billion** at WSPA member facilities alone.¹⁰ If triggered as part of the District’s proposed PR1109.1, such costs must be considered when determining BARCT under PR1109.1. Given the materiality of this issue to the PR1109.1 BARCT determinations, the rule cannot be finalized until this issue has been fully resolved.

11. Chapter 7: NSR Issues Related to the RECLAIM Transition/ Conversion of RTCs to ERCs

The revised Transition Plan states: “Based on input from U.S. EPA, ERCs that were converted to RTCs will not be allowed to be converted back to ERCs.” As we have previously commented, WSPA disagrees with this conclusion. Upon inception of the RECLAIM program, facilities were required to convert their valid banked NO_x Emission Reduction Credits (ERCs) into RECLAIM Trading Credits (RTCs). The form of certification for those creditable emission reductions was changed with that action. With the NO_x RECLAIM Transition, the certificated form of those creditable emission reductions should revert back to ERCs.

12. Chapter 8: Transition Process/Current Recommendations for Transition Process

The revised Transition Plan notes: “U.S. EPA recommended that facilities should not be allowed to exit RECLAIM until the following three regulatory elements are submitted to CARB and U.S. EPA, and approved into the State Implementation Plan (SIP):

- Landing rules for all RECLAIM equipment, including monitoring rules;
- Regulation XX – RECLAIM; and
- Regulation XIII – New Source Review.

RECLAIM facilities would be required to comply with emission limits in landing rules while in RECLAIM, as well as the 12 ton per day shave that was adopted in 2015. RECLAIM facilities would also continue to be subject to Rule 2005 RECLAIM NSR provisions while in RECLAIM. Based on U.S. EPA’s recommendation to keep facilities in RECLAIM until the three regulatory elements are completed and approved into the SIP, Rule 2001 was amended on July 12, 2019 to remove the opt-out provision and to remove language that allowed facilities to exit RECLAIM.

⁹ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 7-6.

¹⁰ In 2020, District Staff surveyed companies subject to PR1109.1 to provide estimated costs for desulfurization of their fuel gas systems. Afterwards, Ramboll acting for WSPA, surveyed WSPA members to provide those District survey responses, confidentially, to Ramboll. The aggregated sum of those cost estimates is presented above.

Staff is still working on specifics for how facilities will exit to transition from RECLAIM to command-and-control.”¹¹

As noted in our comment to Chapter 2, WSPA agrees that NO_x RECLAIM facilities cannot be removed from Regulation XX until a complete set of rules for the NO_x RECLAIM Transition Project have been fully approved by U.S. EPA into the State Implementation Plan (SIP). This will result in a prolonged period of NO_x RECLAIM facilities being regulated under Regulation XX’s market-based structure while simultaneously being forced to meet new command-and-control rules which are not SIP approved. WSPA is very concerned that such “double regulation” will impose an unnecessary regulatory burden and is without any demonstrated environmental benefit. The District must provide a program-level demonstration that such double regulation for this prolonged period will not violate California Health & Safety Code section 39616(c).

13. Chapter 8: Transition Process/Federal Clean Air Act Section 110(l)

Chapter 8 notes: “Regarding the SIP commitment to achieve the 12 ton per day shave of RECLAIM allocations, U.S. EPA recommended, and staff agreed that a one-time programmatic equivalency demonstration can be done with the SIP submittal package for the RECLAIM transition. South Coast AQMD will need to demonstrate that actual emissions from RECLAIM facilities is less than 14.5 tons per day. If actual emissions are > 14.5 tons per day, then emission projections with implementation of landing rules with future effective dates can be used to project actual emissions.”¹²

WSPA agrees with this approach.

Chapter 8 further notes: “CMB-05 is designed to achieve an additional 5 tons per day of NO_x emissions from RECLAIM facilities. Staff has discussed with U.S. EPA whether any demonstration is needed for the 5 tons per day associated with CMB-05. U.S. EPA concurs with staff that no demonstration is needed for the additional 5 tons per day that will be achieved through implementation of command-and-control rules that affect RECLAIM facilities.”¹³

WSPA agrees with this statement. While CMB-05 included an emission reductions target, the emission reductions for the recently adopted NO_x landing rules (e.g., R1134, R1135, R1146, etc.) may not be creditable. The District hasn’t demonstrated that any reductions from those rules would be surplus to the 12 tpd SIP credit previously claimed in conjunction with the December 2015 amendments to Regulation XX.

¹¹ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 8-1.

¹² SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 8-3.

¹³ Ibid.

14. Chapter 9: Permitting/Background

Chapter 9 states: “Permit applications submitted solely for removing no longer applicable RECLAIM provisions or adding applicable requirements for command-and-control rules will not cover any physical equipment modification nor any process change. Therefore, the permit action will not be a modification as defined under Regulation XIII and will not be considered as an NSR event.”¹⁴

WSPA agrees with this statement.

Chapter 9 further notes: “The permit application fee for reissuing a facility permit are specified under Rule 301(l) and are necessary to recover the costs incurred by South Coast AQMD for work performed to revise a RECLAIM permit for facilities that will be exiting the NO_x RECLAIM program. The fees pursuant to Rule 301(l) consists of an initial flat fee and an additional time and materials (T&M) charge where applicable. Both the initial flat fee and T&M charge are tiered based on the number of permitted RECLAIM NO_x sources at the facility. Both the initial flat fee and T&M charge are also differentiated based on a facility’s Title V status. Also specified in Rule 301(l) is the fee for a facility that has transitioned out of the RECLAIM program and voluntarily elects to convert their RECLAIM facility permit into individual command-and-control permits. If necessary, staff will reevaluate the current fee structure in order to ensure staff can recover costs related to the transition of a RECLAIM facility to command-and-control.”

This matter will be addressed in a future Regulation III (Fees) rulemaking. District Staff should be transparent and detailed in disclosing permitting fee changes/amendments to the RECLAIM Working Group and as part of the Regulation III rulemaking.

Chapter 9 also states: “To minimize changes to Title V permits that would require Public Notification requirements, during this initial transition period, facilities with Title V permits would maintain the RECLAIM MRR. In some cases, facilities may choose to incorporate changes to reporting frequency requirements, although, changes to the reporting frequency would constitute a Significant Title V Permit revision, triggering Public Notification requirements.”

WSPA agrees with this statement. As noted in our above comment, the applicable rules for the NO_x RECLAIM Transition need to clearly address how MRR requirements will be transitioned once the District is actually ready to start moving NO_x RECLAIM facilities out of the RECLAIM program.

¹⁴ SCAQMD RECLAIM Transition Plan, Version 2.0, December 2020, page 9-2.

WSPA appreciates the opportunity to provide these comments related to the NO_x RECLAIM Transition Project. We look forward to continued discussion of this important rulemaking process. If you have any questions, please contact me at (310) 808-2144 or via e-mail at psenecal@wspa.org.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Senecal".

Cc: Wayne Nastri, SCAQMD
Cathy Reheis-Boyd, WSPA