

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report

Proposed Amendments to Regulation XX – Regional Clean Air Incentives Market

Proposed Amended Rule 2002 – Allocations for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_x)

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Executive Summary

Background

The South Coast Air Quality Management District (SCAQMD) Governing Board adopted the Regional Clean Air Incentives Market (RECLAIM) program in October 1993. The purpose of RECLAIM is to reduce NO_x and SO_x emissions through a market-based approach. The program replaced a series of existing and future command-and-control rules and was designed to provide facilities with the flexibility to seek the most cost-effective solution to reduce their emissions. It also was designed to provide equivalent emission reductions, in the aggregate, for the facilities in the program compared to what would occur under a command-and-control approach. Regulation XX includes a series of rules that specify the applicability and procedures for determining NO_x and SO_x facility emissions allocations, program requirements, as well as monitoring, reporting, and recordkeeping requirements for sources located at RECLAIM facilities.

Regulation XX was amended on December 4, 2015 to achieve programmatic NO_x RECLAIM trading credit (RTC) reductions from compliance years 2016 through 2022. Among the proposed amendments considered was a provision to address RTCs from shutdown facilities. The Governing Board motion that was approved did not include the shutdown provisions and directed staff to return to the Board, after further analysis and discussion with the RECLAIM working group, with a proposal that would allow a closer alignment of shutdown credits in the RECLAIM program and command and control programs, short of full forfeiture.

SCAQMD staff is proposing amendments to Rule 2002 - Allocations for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_x), which is one rule within Regulation XX – RECLAIM, to address the treatment of RTCs upon NO_x RECLAIM facility shutdowns. The objective is to prevent NO_x RTCs associated with a shutdown facility from entering the market and potentially delaying the installation of pollution controls at other RECLAIM facilities. Specifically, the proposed amendments establish the criteria for determining a facility shutdown and the methodology to calculate the amount of NO_x RTCs by which that facility's future holdings will be reduced. The proposed amendments include exclusions from these provisions for facilities under the same ownership and for facilities with approved planned non-operational status for up to five years.

Public Process

The current rulemaking process for developing shutdown provisions in Proposed Amended Rule 2002 (PAR 2002) began in the 1st quarter of 2016. SCAQMD staff met with the NO_x RECLAIM working group five times, on January 21, February 25, June 8, August 8, and August 30, 2016. The NO_x RECLAIM working group is comprised of representatives from business, environmental groups, RTC brokers, and other agencies. The SCAQMD staff also provides monthly briefings to environmental and community groups regarding the proposed amendments. The public workshop for this amendment was held on Thursday, August 11, 2016.

SCAQMD staff has received eleven comment letters from stakeholders, and has also met with individual RECLAIM facility operators regarding the shutdown provisions of the proposed amendments. Various issues raised by stakeholders have been addressed and incorporated, or otherwise addressed, in the proposed rule amendments.

Chapter 1 – Background

December 4, 2015 Governing Board Motion

Regulation XX was amended on December 4, 2015 to achieve programmatic NO_x RECLAIM trading credit (RTC) reductions from compliance years 2016 through 2022. Among the proposed amendments considered was a provision to address RTCs from shutdown facilities. The Governing Board motion that was approved did not include the shutdown provisions and directed staff to return to the Board, after further analysis and discussion with the RECLAIM working group, with a proposal that would allow a closer alignment of shutdown credits in the RECLAIM program and command and control programs, short of full forfeiture. Paragraph 3 of the motion, which pertains to the shutdown provisions, reads as follows:

“Subparagraph (i) of Rule 2002 that was originally proposed by staff on November 4, 2015 and released in rewritten form on November 28, 2015 is NOT adopted at this time. Staff shall return it to the NO_x RECLAIM Working Group for further discussion and analysis of that proposal’s potential implications on the entire NO_x 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.”

The proposal presented before the Governing Board on December 4, 2015 would have retired all NO_x RTCs from complete facility closures or from equipment shutdowns that represent twenty-five percent or more of a facility’s emissions for any quarter within the previous 2 compliance years. This would have applied to any facility listed in Tables 7 or 8 of Rule 2002 (i.e., the larger NO_x emitting facilities). Permits associated with the equipment being shutdown would be surrendered, and the RTCs for future years would be retired from the RECLAIM program.

Shutdown Credits in the RECLAIM Program

Currently, available RTCs resulting from facilities that permanently shutdown can be sold and reintroduced back into the RECLAIM program for use by other facilities. Allowing the use of shutdown RTCs in a market where many facilities have not yet installed BARCT controls can further delay or eliminate the need for facilities to install equipment to reduce their NO_x emissions.

The emission reductions as a result of the amendments to the NO_x RECLAIM program in 2005 illustrate this condition. The NO_x RTC shave target for the 2005 amendments was 7.7 tons per day from 2007 to 2011. The actual NO_x emission reductions between the timeframe of 2006 and 2012 was 4 tons per day. Of these 4 tons per day, 2.6 tons per day (or 65%) originated from facility shutdowns, while 1.4 tons per day (or 35%) came from

either emission controls, process changes, or from a decrease in production levels due to the recession (Figure 1). Nevertheless, the 2005 shave met its remaining emissions target.

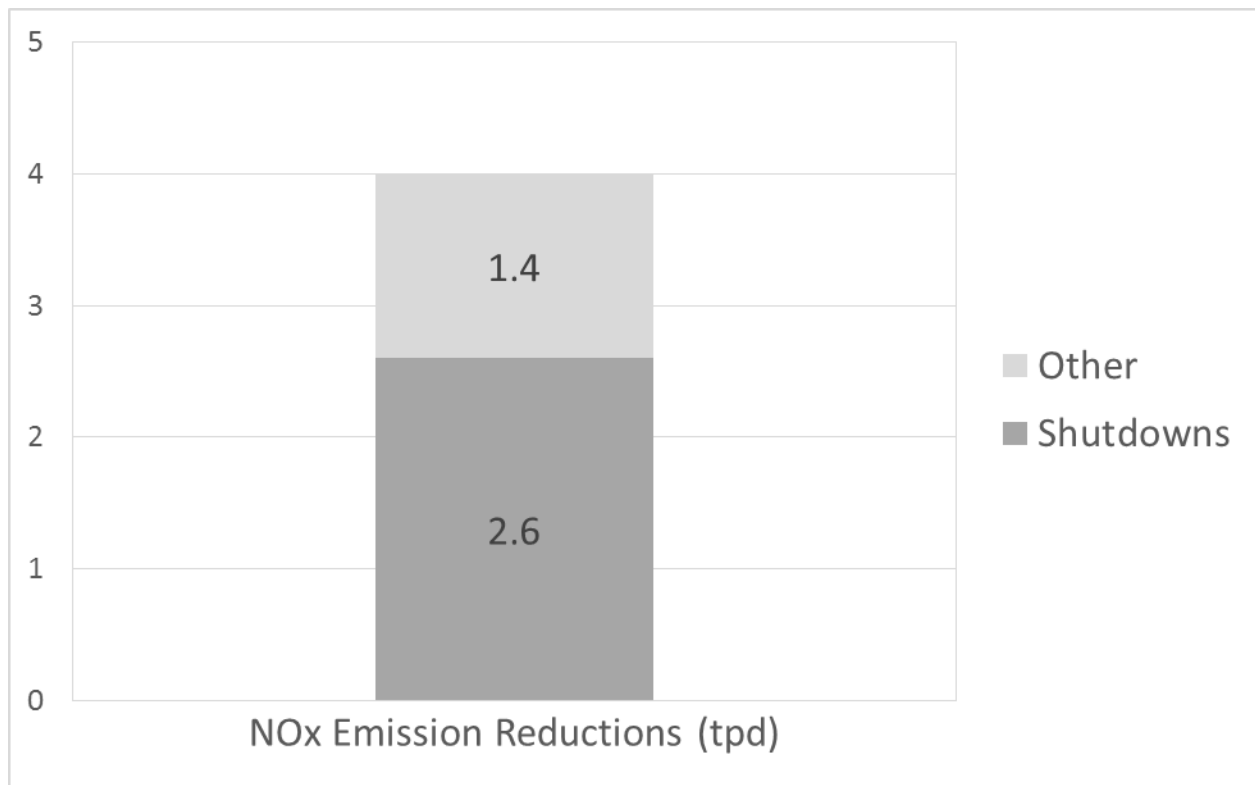


Figure 1. NO_x Emission Reductions Between 2006-2012

Under a command and control regulatory program, facilities are required to meet equipment specific BARCT emission limits and emission reductions from a facility shutdown could not be used to delay installation of BARCT controls at another facility. Emission Reduction Credits (ERCs) generated from facility shutdowns may only be used to offset emissions increases from new or modified sources. However, under RECLAIM, RTCs belonging to shutdown facilities can be sold to other operating facilities in RECLAIM and can be used to delay or eliminate the need for installation of BARCT controls. Figure 2 illustrates the quantity and magnitude of the emissions from shutdown facilities in the RECLAIM program since its inception. The maximum annual emissions for each of these facilities was used, and although there are many smaller emitters that have shutdown, the larger emitting facilities had maximum annual emissions ranging from around 0.2 to over 2 tons per day per facility (~146,000 lbs per year to over 1,460,000 lbs per year). The cumulative maximum emissions for these shutdown facilities total about 5.9 tons per day since program inception (area under the curve in Figure 2).

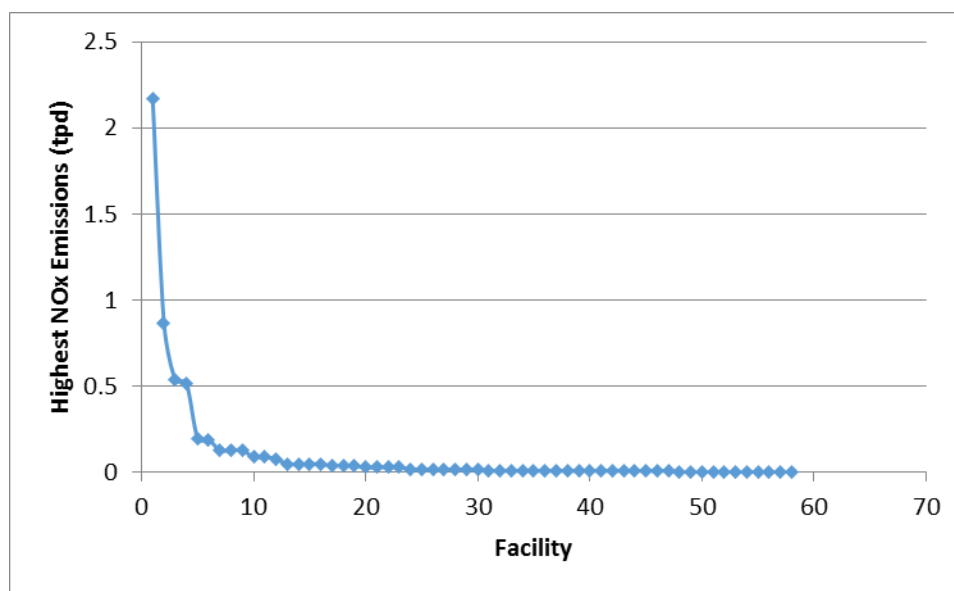


Figure 2. NO_x RECLAIM Facility Maximum Emissions Prior to Shutdown (Ranked by Highest NO_x Emissions)

The emissions from facility shutdowns and the corresponding RTCs can be substantial. To better highlight the magnitude, emissions associated with facility shutdowns were compared to the highest NO_x emitting facilities in the current RECLAIM universe. In Figure 3, the blue bars to the right represent a sample of the range of emissions from the top 90% of NO_x emitters in the RECLAIM program (i.e., the 56 facilities which are listed in Table 7 and Table 8 of Rule 2002) from which the RTC allocation shave for the December 4, 2015 amendments was based. Facility 5 was the top emitter while Facility 15 was the lowest emitter from this subset of the Table 7 and Table 8 facilities. The red bars to the left in Figure 3 represent the maximum emissions from the top four facilities that have shutdown from Figure 2 and illustrate that the magnitude of these emissions is on the same order as many of the top emitting facilities in operation today. The highest NO_x emitter from these shutdown facilities was the California Portland Cement Company. This facility produced cement by operating two long, dry kilns and was at one time the top NO_x emitting source in the NO_x RECLAIM program. The very large quantity of NO_x RTCs that became available upon shutdown were made available for sale and were subsequently purchased by other facilities to meet compliance obligations rather than installation of BARCT controls. The RTC sales from these shutdown credits belonging to California Portland Cement Company exceeded \$100 million.

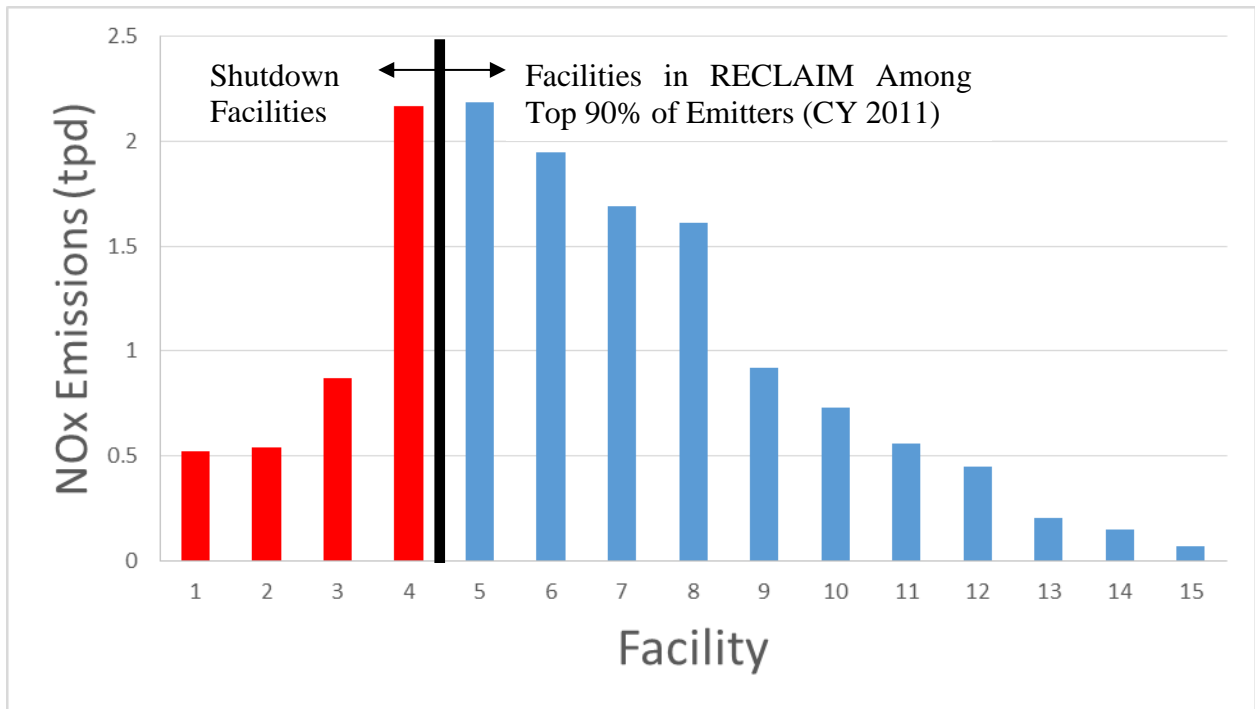


Figure 3. Shutdown Facility Maximum Emissions vs. Current Operating Facility Emissions

On this basis, staff is proposing to have specified amounts of NO_x RTCs reduced from NO_x emitting facilities that have shutdown. This change is proposed to further assure that RECLAIM maintains programmatic equivalency with BARCT emissions levels as specified by state law.

Shutdowns in Command and Control

The most significant difference between RTCs from facility shutdowns in RECLAIM and Emission Reduction Credits (ERCs) from shutdowns under command and control is that there is no discounting or adjustment of RTCs under RECLAIM once a facility shuts down. In command and control, Regulation XIII rules govern how emission reduction credits (ERCs) are generated. Here is brief summary of the ERC generation process:

1. In order to obtain an ERC, an application must be submitted as required by Rule 1309(b).
2. The application is only deemed complete if it satisfies the minimum requirements by the applicant providing supporting data and documents [Rule 1309(b)(1)].
3. Once deemed complete, the emission reductions must meet the eligibility requirements according to Rule 1309(b)(4) of being real, quantifiable, permanent, federally enforceable, and not greater than what would be achieved with current BACT. There is also no crediting of emissions if any equipment is beyond BACT.

4. If the emission reductions meet the eligibility requirements above and no further emission reductions are required per Rule 1309(b)(5) (i.e., required by a control measure or other District, State, or Federal rule), then the ERCs are calculated pursuant to Rule 1306. The emission decrease from a source that has shutdown shall be the actual emissions reduced to the amount which would be actual if current BACT were applied.
5. The ERCs are determined from the emission credits calculated minus any payback necessary, such as a payback from offsets provided by the District's internal bank [Rule 1306(e)(3)]. This is based on the actual emissions during the 2-year period preceding the date of application.
6. The final step prior to the issuance on an ERC is the requirement for a public notice [Rule 1309(f)(3)].

The multi-step approach outlined above does not apply to RECLAIM facilities. As mentioned above, there is currently no discounting or adjustment of RTCs upon a facility shutting down. A RECLAIM facility that shuts down can sell the entirety of the RTCs that it holds at the current market price. If the RTC price for infinite year block credits (IYBs) is favorable, a shutdown facility can significantly profit from the IYB credit sale. It should be noted that at the beginning of the RECLAIM program, allocations of RTCs were provided to facilities free of charge.

Industry Comments for the Shutdown Provisions

Comments were received as a result of the proposed shutdown provisions for the December 4, 2015 amendments. A summary of these comments is provided below:

- The requirements should not apply to shutdown equipment for which the equipment's operational capacity is replaced by new or existing equipment serving the same functional needs at the same facility or another facility under common control.
- The shutdown requirements should not apply to equipment that is used in a cyclical operation or for equipment that is out of service or repair.
- The shutdown requirements should not apply to equipment that is planned to be returned to service at a future date.
- The RECLAIM program is working because buying and selling of RTCs is a fundamental component of a market-based program.
- RTCs from shutdown facilities may be necessary to offset emissions from new or modified facilities, which do not receive RTC allocations to cover these emissions and must purchase RTCs.

Since the December 2015 hearing and during development of the current proposed amendments, additional comments have been received. A summary of these comments is provided below:

- General support for focusing on facility versus partial shutdowns or equipment shutdowns.
- A de minimis level of emissions should be established for applicability of the shutdown provisions.
- Use of the NAICS code to define same ownership is too restrictive.
- Requiring facilities with insufficient holdings to purchase and surrender RTCs should be limited.
- The calculation for determining the amount of RTCs to deduct from a shutdown facility's holdings should include a credit for going beyond BARCT.
- The proposed amendments should allow discrete year sales of RTCs during Planned Non-Operational (PNO) shutdown and during the process of calculating shutdown RTCs.
- The proposed amendments should include a process for the Executive Officer to notify a facility that is under review for potentially being considered shutdown.
- Incorporate criteria for determining what constitutes a temporary shutdown instead of a list of scenarios for temporary shutdowns.
- Conduct an analysis of the impact of shutdown provision on RECLAIM and comparisons with command and control.

Appendix A provides all the public comment letters received and staff's detailed responses.

Affected Facilities

There were 275 facilities in the NO_x RECLAIM program during the recent amendments that were adopted by the Governing Board on December 4, 2015. These facilities either elected to enter the program or had NO_x emissions greater than or equal to four tons per year in 1990 or any subsequent year. The proposed shutdown provisions would apply only to NO_x RECLAIM facilities, and their successors, that are listed in Table 7 and Table 8 of Rule 2002 that shut down entirely, with exceptions and requirements for facilities that experience temporary emission reductions, or experience a Planned Non-Operational shutdown. Any Table 7 or Table 8 facility in the NO_x RECLAIM program that received no initial NO_x allocations would not be subject to the provisions pertaining to shutdowns.

Chapter 2 – Proposed Amendments to Regulation XX, Rule 2002

The proposed amendments regarding NO_x RECLAIM facility shutdowns are addressed in subdivision (i) of Rule 2002, which establishes the methodology for calculating facility allocations and adjustments to RTC holdings for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_x).

Paragraph (i)(1) states the applicability of the shutdown provisions. The proposed shutdown provisions will not be applied retroactively to facility shutdowns that occurred prior to the adoption of the proposed amended rule. The requirements in this subdivision will be effective the date of adoption of the proposed amendments by the SCAQMD Governing Board and will only apply to NO_x RECLAIM facilities listed in Table 7 and Table 8 of Rule 2002 that had an initial NO_x RECLAIM allocation. Table 7 and 8 facilities include the largest facilities in the market and represent over 85 percent of emissions and 90 percent of RTC holdings. There are some NO_x RECLAIM facilities in Table 8 that had no initial NO_x RECLAIM allocation since they entered into the program after the adoption of RECLAIM. The shutdown provisions would not apply to these facilities.

Paragraph (i)(2) states that if an owner or operator of a NO_x RECLAIM facility shuts down or surrenders all operating permits for the facility, that owner or operator must notify the Executive Officer in writing of this shutdown within 30 days.

Paragraph (i)(3) contains the adjustment calculation once a facility self-reports that it is shutdown or is deemed shutdown by the Executive Officer. The NO_x RTC holdings for a facility that shuts down will be reduced from all future compliance years by the amount equivalent to the difference between:

- (A) The average of actual NO_x emissions from equipment that is operated at a level greater than the most stringent applicable BARCT emission factors specified in subparagraph (f)(1)(L) during the highest 2 of the past 5 compliance years for the facility; and
- (B) The average NO_x emissions from the same equipment that would have occurred in those same 2 years identified in subparagraph (i)(3)(A) if the equipment was operated at the most stringent applicable BARCT emission factors specified in subparagraph (f)(1)(L).

If equipment was operating at or beyond BARCT, there will be no adjustment to the NO_x holdings based on emissions from that equipment.

PAR 2002(i)(4) states that:

“Any offsets provided by the SCAQMD pursuant to Rule 1304 that remain as part of the adjusted initial NO_x allocation shall also be subtracted for each future compliance year.”

The RTC holding adjustment would apply to all future compliance year RTCs, but the reduction of RTCs shall not exceed the adjusted initial allocation. The adjusted initial allocation is the remaining amount of RTCs that a facility is allocated each compliance year after all the reductions associated with subsequent RTC shaves have been applied.

The RTCs to be reduced for the NO_x RECLAIM facility would be the lesser amount of its adjusted initial allocation or the calculated BARCT-adjusted amount, per the provisions of paragraph (i)(3). Paragraph (i)(5) states:

“If the reduction of NO_x RTCs calculated pursuant to paragraph (i)(3) and (i)(4) exceeds the adjusted initial NO_x allocation as specified in paragraph (f)(1) for any future compliance year, the facility shall have its NO_x holdings reduced by an amount equivalent to the adjusted initial NO_x allocation for that compliance year.”

Under the proposed shutdown provisions, a NO_x RECLAIM facility that shuts down is responsible for providing the RTCs to the SCAQMD. PAR 2002(i)(6) requires that if the reduction of NO_x RTCs calculated pursuant to paragraphs (i)(3) through (i)(5) exceeds the facility’s future year NO_x RTC holdings, within 180 days of notification by the Executive Officer pursuant to paragraph (i)(11), the owner or operator of the NO_x RECLAIM facility would be required to purchase and then surrender the sufficient quantity of RTCs to fulfill the entire reduction requirement. A NO_x RECLAIM facility that has knowledge of an imminent shutdown should not attempt to sell off its infinite year block RTCs if it knows that it may result in a deficit. Otherwise, the facility would have to purchase the quantity of RTCs in the open market at the current market price to fulfill the RTC adjustment obligation, if there is a deficit as a result of the RTC holding reduction.

Under PAR 2002, in addition to a self-reported facility shutdown, the Executive Officer can deem a NO_x RECLAIM facility as shutdown. Paragraph (i)(7) states that the Executive Officer will begin the process of deeming a NO_x RECLAIM facility as shutdown by notifying it that it is under review. This will be a result of reviewing the facility’s Annual Permit Emissions Program (APEP) report. The APEP reports provide evidence of operational emissions from a RECLAIM facility. If a facility’s annual NO_x emissions decrease substantially compared to the maximum emissions during the last five years, the Executive Officer would notify the facility that it can potentially be deemed shutdown. The facility would have an opportunity within 60 days of receiving the notification to either confirm that the facility is indeed shutdown or submit information to substantiate that it is not shutdown. Paragraph (i)(7) lists three sets of criteria for substantiating that a facility is not shutdown:

- (A) Permanent emission reductions have been implemented at the facility and can be attributed to implementation of an emissions control strategy such as, but not limited to: implementation of pollution control strategies, efficiency improvements, process changes, material substitution, or fuel changes; or
- (B) NO_x emission reductions are temporary where temporary NO_x emission reductions include, but are not limited to: cyclic operations, economic fluctuations, temporary shutdown of equipment due to equipment maintenance, repair, replacement, permitting, compliance, or availability of feedstocks or fuels; or

- (C) The owner or operator of a NO_x RECLAIM facility has an approved Planned Non-Operational Plan pursuant to paragraph (i)(9).

It is not uncommon for a facility to maintain small ancillary equipment operating during a facility shutdown. This was demonstrated when the California Portland Cement Company shutdown its cement production operations. The two major source kilns were shut down, but small ancillary equipment remained in operation as the facility underwent a facility shutdown. Since the emissions from the kilns comprised the vast majority of its total annual emissions, the facility had become essentially non-operational. Under this proposal, a NO_x RECLAIM facility that experiences a similar substantial decrease in emissions would be potentially deemed as shutdown by the Executive Officer unless they meet the criteria above under subparagraphs (i)(7)(A) through (i)(7)(C).

Under paragraph (i)(7), a facility would not be considered shutdown if it meets one of the three criteria in subparagraphs (i)(7)(A) through (i)(7)(C).. In addition, as a result of discussions with NO_x RECLAIM facility operators during rule development, staff has incorporated proposed rule language to reflect three criteria instead of specific situations where a facility would not be deemed a shutdown. As discussed above, the three criteria are: permanent reductions that are generally attributed to an emission reduction control strategy; a temporary reduction that can be attributed to any short-term reduction or temporary stop of some or all operations due to a variety of reasons; or a facility has an approved Planned Non-Operational Plan. Some examples of temporary reductions include but are not limited to cyclical operations that can take place over the course of several years, operational emissions temporarily ceasing because there has been a delay in obtaining parts for equipment or pollution controls, or a facility modifying existing or installing new equipment or pollution controls and operations must be put on a reserve status until the equipment and/or pollution controls are recommissioned and reinstated.

Once the Executive Officer reviews the information submitted by the facility to substantiate that the facility is or is not shutdown, paragraph (i)(8) states that a determination will be made that the facility has or has not been deemed as shutdown and the facility will be notified within 60 days. Under subparagraph (i)(8)(A), if the Executive Officer determines that a NO_x RECLAIM facility is shutdown after review, the owner or operator would be subject to the RTC reduction requirements specified in paragraphs (i)(3) through (i)(6). The Executive Officer will not consider information submitted after the due date (beyond 60 days of the notification issue date) unless information is subsequently requested by the Executive Officer [PAR 2002(i)(8)(B)]. The owner or operator of a NO_x RECLAIM facility that has been deemed shutdown by the Executive Officer may appeal the determination to the SCAQMD Hearing Board [PAR 2002(i)(8)(C)].

If a NO_x RECLAIM facility experiences a substantial reduction of emissions due to some of its equipment becoming non-operational and intends on returning to normal operation sometime in the future, it can submit a Planned Non-Operational (PNO) Plan, along with the corresponding plan fees listed in Rule 306, under paragraph (i)(9) to request this status for a non-operational time period of no longer than 5 years for the equipment within the facility. The Executive Officer will consider the criteria specified in subparagraph (i)(7)(B) for approving the plan and will require company records to support the claim that a PNO

status of no longer than 5 years is necessary [PAR 2002(i)(9)(A)]. The Executive Officer will approve or disapprove the PNO Plan within 180 days of receiving a completed PNO Plan [PAR 2002(i)(9)(B)]. If the PNO Plan is approved, the owner or operator may sell current compliance year RTCs for the duration of the approved PNO Plan and the future year RTCs would become non-tradable for the duration of the PNO status [PAR 2002(i)(9)(B)(i)]. The term “current compliance year” refers to the year that is current at the time the sale is made. However, if the PNO Plan is disapproved and the facility is deemed shutdown by the Executive Officer, clause (i)(9)(B)(ii) states that the owner or operator of the NOx RECLAIM facility would be subject to the RTC holding reduction requirements specified in paragraphs (i)(3) through (i)(6). If the Executive Officer denies the PNO Plan, the owner or operator of the NOx RECLAIM facility may appeal to the Hearing Board [PAR 2002(i)(9)(B)(iii)].

Paragraph (i)(10) restates that if a NOx RECLAIM facility has been deemed shutdown, whether by self-reporting [in paragraph (i)(2)], Executive Officer determination [in paragraph (i)(8)], or by disapproval of a PNO Plan [in clause (i)(9)(B)(ii)], the facility’s NOx holdings will be reduced pursuant to paragraphs (i)(3) through (i)(5).

Once the Executive Officer determines the quantity of the NOx RTC holding reduction for a facility that has been deemed as shutdown, the facility will be notified of that amount and the reduction will be applied to NOx RTC holdings for all future compliance years following this notification [PAR 2002(i)(11)]. The Executive Office will re-issue the facility permit to reflect the reduction of NOx RTC holdings. The owner or operator of a NOx RECLAIM facility may file an appeal to the Hearing Board for the shutdown determination and for the reduction in NOx RTC holdings.

Under paragraph (i)(12), an owner or operator of a NOx RECLAIM facility that has notified the Executive Officer that it has shutdown or has received notification from the Executive Officer that it is under review as potentially shutdown would not be able to sell any future compliance year RTCs and may only sell current compliance year [as specified above in clause (i)(9)(B)(i)] RTCs until the Executive Officer notifies the owner or operator of the amount of the reduction of NOx RTCs pursuant to paragraph (i)(11).

PAR 2002(i)(13) provides an exemption from the shutdown RTC holding adjustment requirements for facilities that shutdown and transfer RTCs to another facility that is under the same ownership. If one or more facilities are under the same ownership as of September 22, 2015 (the RTC holding freeze date for the most recent NOx shave), a written declaration would need to be submitted to the Executive Officer within 30 days after the amendments are adopted. This declaration would identify the NOx RECLAIM facilities that are under the same ownership as of September 22, 2015 and demonstrate how the identified facilities are under the same ownership. Staff reviewed the U.S. EPA definition of same ownership which indicated it can be demonstrated in several ways. These include, but are not limited to: a dependency of one facility’s operations on the other by way of feedstocks or by-products; facilities under the same ownership sharing the same common workforces, plant managers, security forces, corporate executive officers, or board of executives; or facilities under the same ownership sharing pollution control responsibilities. The EPA definition is a guide and can be used by the Executive Officer

to make the determination that one or more facilities are under the same ownership. For the purposes of this rule, same ownership is generally defined as facilities and their subsidiaries or facilities that share the same Board of Directors or shares the same parent corporation. NO_x RECLAIM facilities under the same ownership do not necessarily need to be on contiguous properties and can, for example, share the same name or the same parent corporation. Also, the parent corporation does not necessarily have to own 100 percent of the facility.

The Executive Officer will maintain a listing of those facilities that are determined to be of same ownership as of September 22, 2015. The Executive Officer will only amend its same ownership listing to exclude those facilities that no longer qualify for same ownership through circumstances such as mergers, sales, or other dispositions [PAR 2002(i)(13)(A)].

In the event of a facility reporting a shutdown or is deemed shutdown by the Executive Officer, NO_x RTCs from that facility may be transferred to another facility under the same ownership as listed in the most current listing of same ownership without reductions as specified under paragraphs (i)(3) through (i)(6). Such transferred NO_x RTCs shall be designated as non-tradable.

Chapter 3 – Impact Assessment

NOx RECLAIM Market Impacts

The purpose of the proposed amendments is to further ensure maintenance of NOx RECLAIM programmatic BARCT equivalency by avoiding the use of shutdown RTCs to delay emission reductions. Staff does not anticipate any adverse impacts on the operation and performance of the RECLAIM program resulting from the implementation of the proposed rule amendments. This is predicated on the following: The shutdown of NOx RECLAIM facilities will reduce NOx emissions, and thus, demand for NOx RTCs, at an equal or lesser amount than the reduction in the supply of NOx RTCs. Commenters have stated that RTCs made available in the market from facility shutdowns provide a critical supply of RTCs which allow for a functioning market and economic growth. However, the previous NOx RECLAIM shaves have included sufficient RTCs above projected future emissions, allowing for economic growth, for a functioning market. RTC holdings remaining after the reduction (shutdown RTC holding adjustment) will be available for use in the RECLAIM program.

Analysis of Establishing the Applicability to Table 7 and 8 Facilities

Staff analyzed the potential RTCs that can enter the open market from a facility shutdown based on NOx RTC holdings as of the freeze date of September 22, 2015. The 2015 NOx RTC allocation shave affected the top 90% of NOx RTC holdings. The facilities comprising Tables 7 and 8 of Rule 2002 hold about 90% of the NOx RTCs for the RECLAIM universe (Figure 4).

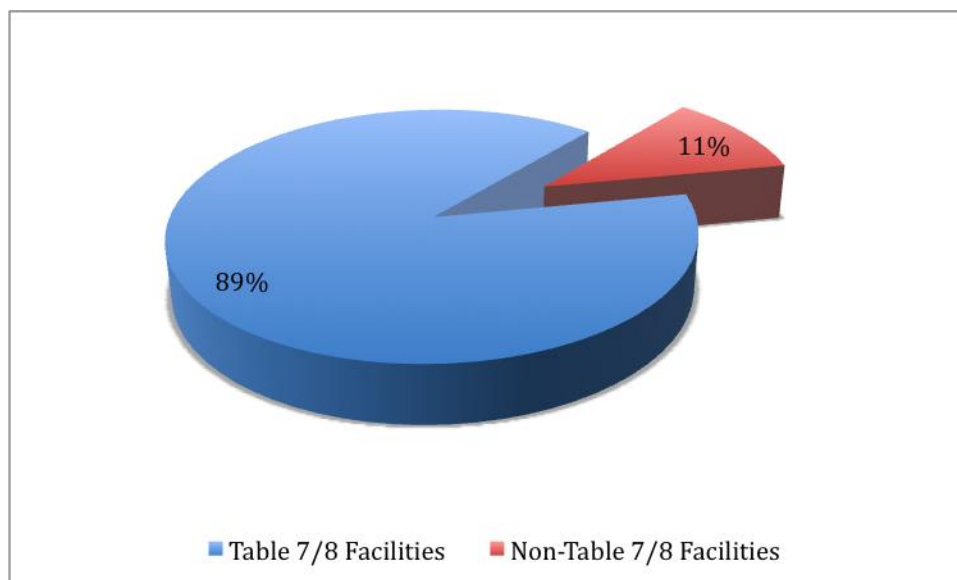


Figure 4. RTC Net Holders Distribution as of September 22, 2015 Freeze Date.

Likewise, these same facilities account for 86% of the emissions for the RECLAIM universe (Figure 5).

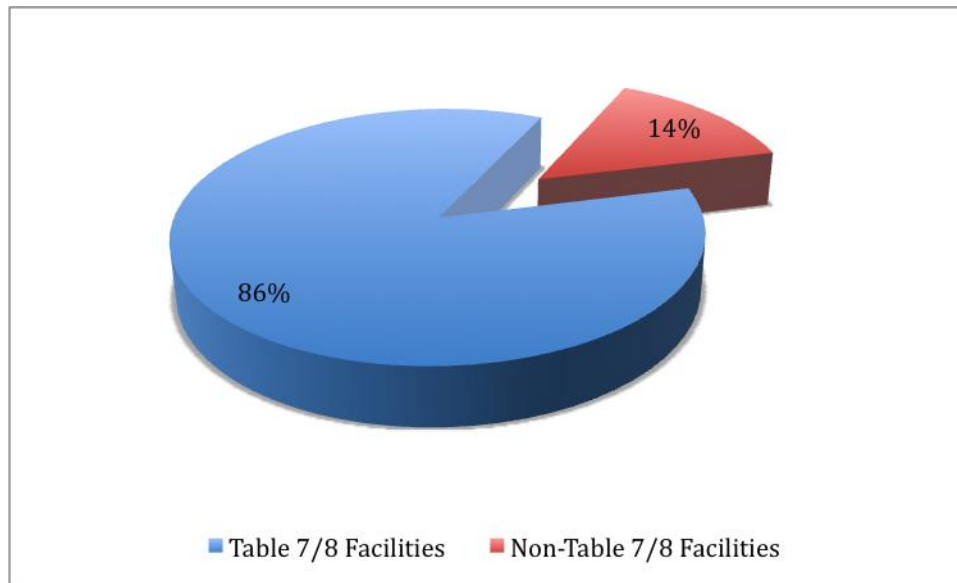


Figure 5. NO_x Emissions Distribution Based on Compliance Year 2013 Audited Emissions.

The Table 7 and Table 8 facilities account for the majority of the holdings and emissions of the NO_x RECLAIM universe. Staff next considered whether there would be any significant impacts from a potential shutdown facility that is not in Table 7 or 8. Many of these facilities are very low emitting facilities with a small amount of holdings. The average holdings for non-Table 7 and 8 facilities are about 4.3 tons per year. There are only 10 non-Table 7 and 8 facilities that have emissions greater than 20 tons per year. The emissions and holdings for these 10 facilities are illustrated in Figure 6. It is assumed that a similar level of emissions from compliance year 2013 would be maintained into the future, which is what is compared to compliance year 2016 holdings. It is clear that the holdings for these facilities are much lower than their emissions (70% lower on average), indicating they likely buy additional RTCs on a year-to-year basis to meet compliance obligations.

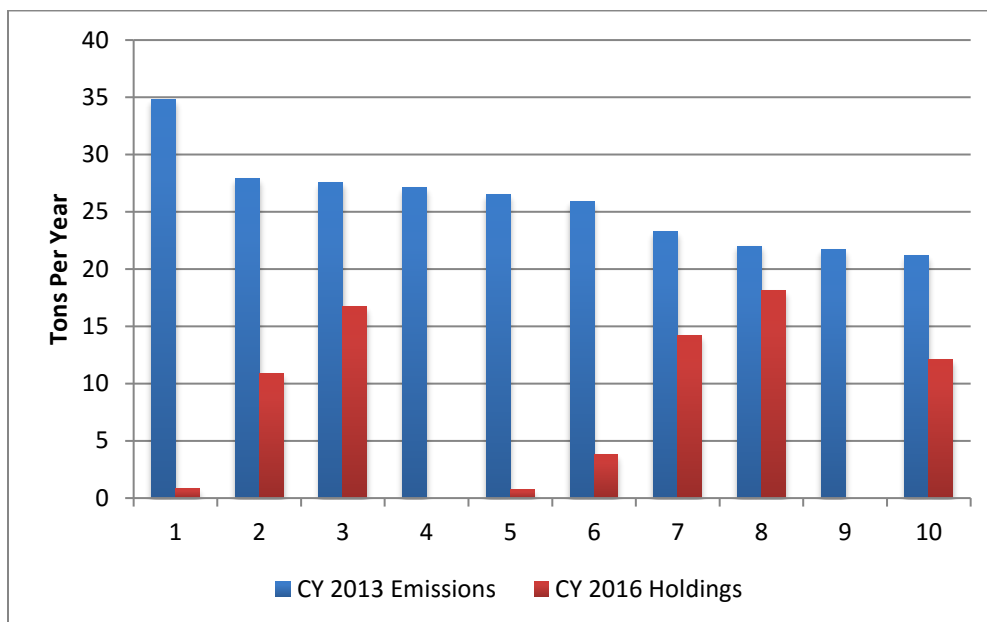


Figure 6. Highest Emitting Non-Table 7 and 8 Facilities for Compliance Year 2013

Staff also analyzed those non-Table 7 and 8 facilities whose holdings (rather than the emissions analyzed above) fall just underneath the 90% RTC holdings cutoff point and those facilities whose holdings are much higher than their emissions.

Table 1. Holdings and Emissions for Non-Table 7 and 8 Facilities with High Holdings to Emissions Ratio

Facility	CY 2016 Holdings (lbs/yr)	CY 2013 Emissions (lbs/yr)
A	43,803	22,391
B	42,910	26,956
C	42,745	18,663
D	39,549	5,643
E	34,094	695
F	33,889	18,684
G	32,734	13,053
H	31,000	5,612
I	29,960	15,008
J	28,375	11,610
K	27,965	0
L	25,333	14,769
M	18,982	1,854
N	17,644	1,660
O	16,430	4,547
P	15,938	656
Q	14,943	3,168
TOTAL (tons/day)	0.68	0.23

In the unlikely scenario that all of these facilities, in aggregate, shutdown and sell all of their RTCs, the total RTCs entering the market is less than 3 percent of the total holdings of all Table 7 and 8 facilities. The facility with the highest holdings in Table 1 accounts for about 0.5 percent of Cal Portland Cement Company’s compliance year 2009 holdings.

To further illustrate the insignificant potential supply of shutdown RTCs from non-Table 7 and 8 facilities, the difference or “delta” between recent emissions and future year holdings of the Table 7 refineries are shown in Table 2.

Table 2. Refinery Emissions and Holdings Deltas

Refinery	Average Audited Emissions (CY 2010-2014), lbs/yr	Holdings (CY 2022+), lbs/yr	Delta (Emissions minus Holdings), lbs/yr
1	90,266	43,323	46,943
2	1,120,727	510,743	609,984
3	677,307	226,757	450,550
4	421,963	0	421,963
5	1,331,768	898,886	432,882
6	508,906	490,661	18,245
7	1,487,657	1,126,697	360,960
8	1,636,465	787,422	849,043
9	1,250,092	700,604	549,488
Average Delta			415,562
Total Delta			3,740,058

Table 2 illustrates that if a refinery were to remain emitting at the same levels as the previous 5 years as their holdings gradually decrease as a result of the 2015 shave through 2022, all refineries will either need to make NO_x emissions reductions within their facility or purchase RTCs to reconcile these emissions. The total demand for NO_x RTCs in 2022 is approximately 3.7 million pounds (over 5.1 tons per day) from refineries, assuming no additional pollution controls are installed. This quantity, however, is of such a large magnitude that purchasing RTCs from potential shutdown facilities outside of Tables 7 and 8 would do very little to close the gap between the holdings and emissions. The holding amounts from the largest RTC holders outside of Table 7 and 8 facilities shown in Table 1 are ten times smaller than the average gap at the refineries.

Furthermore, for an amount of RTCs equivalent to the average refinery “delta”, a refinery would have to purchase all the RTCs from shutdowns of the top 11 RTC holders outside of Tables 7 and 8. These facilities include two breweries, LAX International Airport, NASA Jet Propulsion Laboratory, and three electrical generating facilities, among others. Alternatively, the same refinery would have to purchase all NO_x RTCs from shutdowns of the bottom 140 emitting facilities in the NO_x RECLAIM universe. These extreme shutdown scenarios are extremely unlikely, but the comparisons are made to illustrate that there would be a negligible impact on the need to install controls at the Table 7 facilities if

shutdown credits became available from a non-Table 7 and 8 facility. On this basis, it is staff’s recommendation in the proposed rule amendments that the shutdown provisions are only applicable to Table 7 and 8 facilities. The staff proposal is designed to prevent the larger sell offs of RTCs upon facility shutdowns of the magnitude of California Portland Cement Company. If the shutdown provisions would have been in effect at the time California Portland Cement shutdown, over 1.2 tons per day (over 876,000 lbs/year) of NOx RTCs would have been removed from the market.

Analysis of a NOx RECLAIM Facility that Shuts Down that has Insufficient RTC Holdings Due to Previous Sales of Infinite Year Block RTCs

PAR 2002 (i)(6) requires the owner or operator of a shutdown NOx RECLAIM facility to purchase and then surrender the sufficient quantity of RTCs to fulfill the entire reduction requirement if their reduction in holdings from the calculation methodology exceeds the facility’s holdings of NOx RTCs. The potential impacts of a facility selling its infinite year block RTCs before shutting down were also analyzed. Staff identified only one facility that would need to go to the open market because it has already sold all its future holdings, if it were to shutdown. The amount of RTCs this facility would be required to purchase and surrender would be the adjusted initial allocation for that compliance year, and each compliance year thereafter because the delta between the reported NOx emissions and the NOx emissions at BARCT is greater than the adjusted initial allocation. Under paragraph (i)(5) of the proposed amended rule, the maximum deduction from a facility’s holdings or that a facility would be required to surrender would be the adjusted initial allocation for that compliance year and each compliance year thereafter.

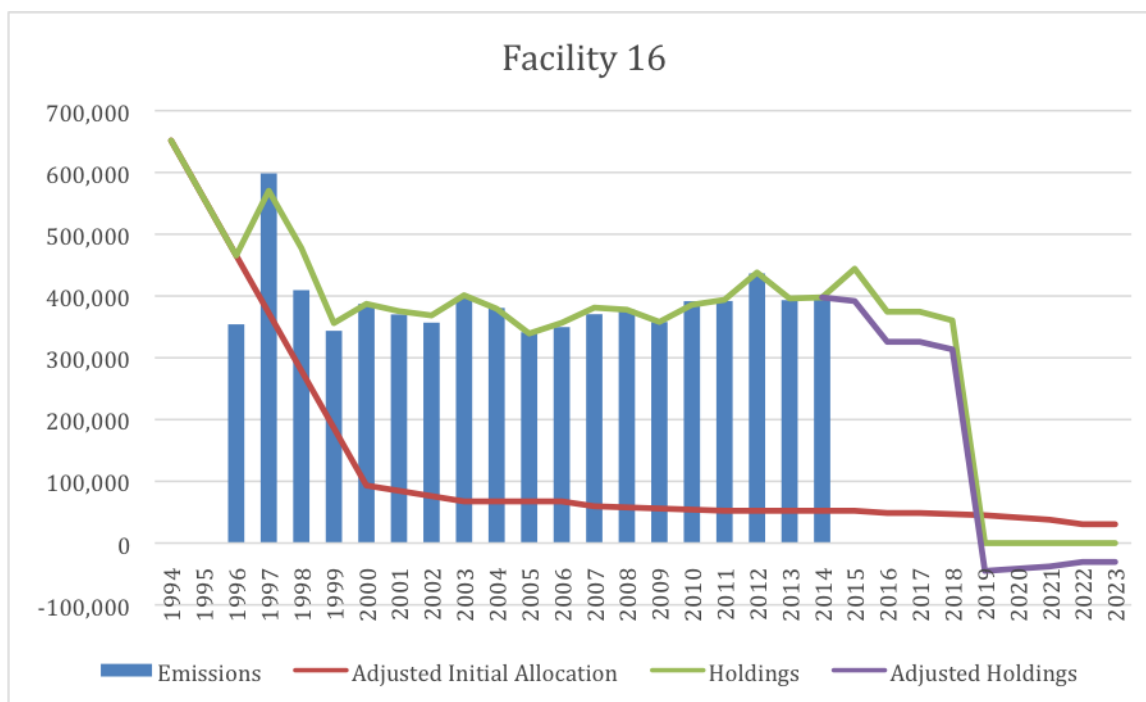


Figure 7. Sample Scenario for RTC Holding Reduction Upon Shutdown

In this case, the facility would have to go out and purchase RTCs to make up the difference as depicted by the negative values of the adjusted holdings line in Figure 7 (the purple line). In compliance year 2023, this facility would need to purchase 30,512 lbs/year to fulfill the obligation. The amount of RTCs needed represents about 0.4 percent of the total holdings for the Table 7 and 8 facilities; the percentage would be even smaller for the entire market. Moreover, this amount is only about 10 percent of the RTCs the facility would need to purchase if it were to continue operations in the future at the same emission level. Consequently, the staff recommendation in the proposed rule is to require these RTCs to be purchased and then surrendered if a facility is in this situation because the overall impact to the market is not significant. The provision is needed to avoid sell-offs of future year RTC holdings prior to a facility shutting down to avoid the impact of the proposed shutdown provisions.

Evaluation of Table 7 and 8 Facilities

Staff also examined audited reported emissions, adjusted initial allocations, holdings, and adjusted holdings for Table 7 and 8 facilities that were given an initial allocation at the beginning of the RECLAIM program. The adjusted holdings are a rough estimate of the adjustment to a facility's holdings if they were to shutdown and are calculated by applying the 2015 BARCT shave amounts to the respective Table 7 and 8 facilities. For example, the Table 7 facilities had an adjustment of 56% (the programmatic shave due to BARCT) while the Table 8 facilities had an adjustment of 42% (the programmatic shave due to BARCT). Each facility, due to the types of equipment it operates at different emissions levels, may end up with a different net adjustment if it was to shutdown. However, to simplify the analysis, this programmatic BARCT adjustment was assumed.

Appendix B contains the resulting plots of Table 7 and 8 facilities by category (other Table 8 facilities with an initial allocation, power plants, and refineries). It is worth noting that these scenarios assume that nothing will be done in the future as far as the installation of NO_x reducing technology to meet BARCT. If a facility installs BARCT controls, the amount deducted from a facility's holdings would be reduced if the facility were to shutdown. Since power plants are assumed to be at BARCT, the holdings and adjusted holdings are identical.

Depending on a facility's holdings, the proposed shutdown provisions may not remove the entire future holdings of a facility, dependent upon the adjusted initial allocation, the holdings, and the BARCT calculation. To better understand the potential RTCs that can remain in the market after a facility shutdown, staff evaluated the Table 7 and 8 facilities. Essential public services and refineries were excluded from this analysis as it is unlikely these facilities will shutdown. However, Appendix B demonstrates that if a refinery were to shut down prior to installing additional controls, the refinery would likely lose all of the adjusted allocation of RTCs provided to them at the beginning of RECLAIM. As shown in Table 3, six facilities were identified with holdings that are greater than their 2022 adjusted initial allocation. Four facilities, Facility 18, 20, 10, and 12 have emissions that are well over their adjusted initial allocation, indicating that the amount of RTCs deducted if they were to shutdown would equal their adjusted initial allocation. It is assumed for Facility 18, 20, 10, and 12 that holdings in excess of their adjusted initial allocation could

flow into the open market as IYB RTCs. For Facility 2 and 9, their emissions are substantially lower than their initial adjusted allocation. As a conservative assumption, it is assumed that the entire holdings for Facility 2 and 9 could flow into the open market as IYB RTCs. In 2022, the total amount of RTCs that could be made available if all six facilities were to shutdown would be 206,315 lbs. per year. This represents about 5.5% of the total RTCs needed if all refineries maintained current emission levels, which is not enough to significantly affect their compliance options.

Table 3
Facilities with Potential Holdings Above the Adjusted Initial Allocation in 2022
(Non-Refinery or Utility)

Facility	RTC Holdings > Initial Allocation
18	2,990
20	6,777
2	32,644
9	49,686
10	33,623
12	80,595
Total	206,315

Thus, with the treatment of facility shutdowns as proposed, NO_x RECLAIM should continue to programmatically operate as anticipated with further assurance that programmatic equivalency with command and control is maintained. The proposed shutdown provisions will prevent large sell-offs of infinite year block RTCs from shutdown facilities that would delay the installation of BARCT controls at other RECLAIM facilities.

California Environmental Quality Act

The currently proposed amendments to Regulation XX, Rule 2002 are considered to be modifications to the previously approved project (the December 4, 2015 amendments to Regulation XX) and are a "project" as defined by the California Environmental Quality Act (CEQA). CEQA requires that the potential adverse environmental impacts of proposed projects be evaluated and that feasible methods to reduce or avoid identified significant adverse environmental impacts of these projects be identified.

CEQA Guidelines Section 15164(a) allows a lead agency to prepare an Addendum to a previously certified CEQA document if some changes or additions are necessary but none of the following conditions as described in CEQA Guidelines Section 15162 have occurred:

- Substantial changes which will require major revisions of the previous CEQA document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes, with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous CEQA document due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or,
- New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous CEQA document was certified as complete, such as:
 - The project will have one or more significant effects not discussed in the previous CEQA document;
 - Significant effects previously examined will be substantially more severe than shown in the previous CEQA document;
 - Identification of mitigation measures or alternatives previously found not to be feasible, but would in fact be feasible, and would substantially reduce one or more significant effects, but the project proponent declines to adopt the mitigation measures or alternatives; or,
 - Identification of mitigation measures or alternatives which are considerably different from those analyzed in the previous CEQA document would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The environmental impacts from installing BARCT equipment in response to implementation of the December 2015 amendments were fully analyzed in the Final Program Environmental Assessment (PEA) for Proposed Amended Regulation XX - Regional Clean Air Incentives Market (RECLAIM) that was certified by the SCAQMD Governing Board on December 4, 2015 (referred to herein as the December 2015 Final PEA)¹. In addition, even though the SCAQMD Governing Board elected to not adopt the December 4, 2015 version of subdivision (i) of Proposed Amended Rule 2002, the December 2015 Final PEA included an analysis of the potential environmental effects of implementing the portion of the December 2015 proposal relative to the handling of shutdown RTCs.

SCAQMD staff's review of the currently proposed project (also amending Rule 2002 (i)) shows that while the criteria has been revised from the original proposal in December 2015 relative to the handling of shutdown RTCs, the potential impacts from implementing the currently proposed project are concluded to be the same as what was previously analyzed in the December 2015 Final PEA. Thus, the current proposal for handling shutdown RTCs would not be expected to trigger any conditions identified in CEQA Guidelines Section

¹ References: State Clearinghouse No. 2014121018 / SCAQMD No. 12052014BAR

15162. Therefore, an Addendum is the appropriate CEQA document for the currently proposed project.

In conclusion, the SCAQMD, as lead agency, has prepared an Addendum to the December 2015 Final PEA. While an Addendum need not be circulated for public review [CEQA Guidelines § 15164(c)], the Addendum to the December 2015 Final PEA, as well as the proposed amendments to Regulation XX, Rule 2002, will be made available to the public 30 days prior to Public Hearing to be held on October 7, 2016. The previously certified December 2015 Final PEA, supporting documentation, and record of approval of the December 2015 amendments are available upon request by calling the SCAQMD Public Information Center at (909) 396-2309 2039 or by visiting SCAQMD's website at www.aqmd.gov. The direct link to the December 2015 Final PEA can be found at <http://www.aqmd.gov/home/library/documents-support-material/lead-agency-scaqmd-projects/scaqmd-projects---year-2015>.

Socioeconomic Analysis

The proposed amendments would not be expected to create new socioeconomic impacts resulting in new or more severe significant effects beyond those analyzed in the previous Final Socioeconomic Report for the December 4, 2015 amendments to Regulation XX. Specifically, staff acknowledged in the previous report that the provision of surrendering and retiring NO_x RTCs from the market could potentially affect the credit market and prices, and that the magnitude of the potential impact would depend heavily on the usual market behavior of each facility before it decides to shut down. In the same report, a market analysis was included which analyzed the potential incremental compliance cost for the affected facilities under various credit price scenarios, from no effects on the current market price to the worst-case scenario where the discrete NO_x RTC price reaches the threshold of \$22,500 per ton and thus would trigger the price stabilizing mechanism set forth in Rule 2002.

Draft Findings Under California Health and Safety Code

California Health and Safety Code § 40727 requires that prior to adopting, amending or repealing a rule or regulation, the SCAQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the public hearing and in the staff report.

Necessity

A need exists to amend Rule 2002 – Allocations for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_x), to establish requirements for the treatment of NO_x RECLAIM Trading Credits (RTCs) from facility shutdowns for the largest NO_x facilities such that the RECLAIM program is further ensured to maintain equivalency with BARCT regulations as required by state law.

Authority

The SCAQMD Governing Board has authority to amend existing Rule 2002 – Allocations for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_x), pursuant to California Health and Safety Code §§ 39002, 40000, 40001, 40440, 40440.1, and 40702.

Clarity

The proposed amended rule is written or displayed so that its meaning can be easily understood by the persons directly affected by it.

Consistency

The proposed amended rule is in harmony with and not in conflict with or contradictory to, existing statutes, court decisions or state or federal regulations.

Non-Duplication

The proposed amended rule will not impose the same requirements as any existing state or federal regulations. The amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, SCAQMD.

Reference

By adopting the proposed amended rule, the SCAQMD Governing Board will be implementing, interpreting and making specific the provisions of the California Health and Safety Code §§ 39002, 40001, 40440 (a), 40406, 40440.1, 40702, and 40725 through 40728.5; and Title 42 U. S. C. Sections 7410 and 7511a.

Comparative Analysis

A comparative analysis, as required by H&S Code §40727.2, is applicable when an amended rule or regulation imposes, or has the potential to impose, a new emissions limit, or other air pollution control requirements. The proposed amendment does not impose new emission limits or control requirements, and thus a comparative analysis is not required.

Incremental Cost Effectiveness

California H&S Code § 40920.6 requires an incremental cost effectiveness analysis for BARCT rules or emission reduction strategies when there is more than one control option which would achieve the emission reduction objective of the proposed amendments, relative to ozone, CO, SO_x, NO_x, and their precursors. The proposed amendment does not include new BARCT requirements; therefore this provision does not apply to the proposed amendment.

References

1. Staff Report to Proposed Amendments to Regulation XX. Agenda Item 30 of the SCAQMD Governing Board Meeting, December 4, 2015.
2. Final Program Environmental Assessment to Proposed Amendments to Regulation XX. Agenda Item 30 of the SCAQMD Governing Board Meeting, December 4, 2015.
3. Final Socioeconomic Report to Proposed Amendments to Regulation XX. Agenda Item 30 of the SCAQMD Governing Board Meeting, December 4, 2015.

ATTACHMENT A: PAR 2002 PUBLIC COMMENTS AND RESPONSES

The following comments were presented in the following letters listed below as well as the July 22, 2016 Stationary Source Committee meeting, August 11, 2016 Public Workshop, and the five Working Group meetings held on January 21, February 25, June 8, August 9, and August 30, 2016.

Comment Letter	Date(s)
Amerex Brokers, LLC	August 18, 2016
California Council for Environmental Economic Balance (CCEEB)	August 26, 2016
California Construction and Industrial Materials Association (CalcIMA)	August 26, 2016
ES Engineering	August 26, 2016
NRG Energy Inc.	August 26, 2016
Southern California Air Quality Alliance	August 18, 2016
Southern California Gas Company	August 26, 2016
Tesoro	August 26, 2016
Western States Petroleum Association (WSPA)	August 8, 2016 and August 26, 2016 September 2, 2016

Need for Rulemaking

Comment: The RECLAIM program is working because buying and selling of RTCs is a fundamental component of a market-based program. Consequently, there is no need for any rulemaking that would remove RTCs from the RECLAIM market in the event of a facility shutdown.

Response: The analysis presented in this Draft Staff Report indicates that the lack of a shutdown rule could result in disincentives to install BARCT. The proposal establishes a calculation methodology that limits the amount of RTCs that can be deducted to the initial adjusted allocation and allows owner or operators to keep RTCs associated with equipment that is at or below BARCT levels. PAR 2002 will allow the RECLAIM market to continue functioning while limiting a portion of RTCs associated with facility shutdowns to flow into the open market.

Facility versus partial or equipment shutdowns

Comment: Any shutdown provisions should be limited to the entire facility not to individual equipment.

Response: Staff agrees with the commenter and has limited the proposed amendments to total facility shutdowns.

Same Ownership

Comment: Defining same ownership based on the 6-digit NAICS code is too narrow and would unfairly limit facilities from the use of the same ownership provision.

Response: Staff has re-examined the 6-digit NAICS code and its applicability to same ownership among NO_x RECLAIM facilities. Based on this review, staff agrees that the 6-digit NAICS code may be too narrow and may not adequately address facilities under the same ownership. On this basis, staff is proposing to focus on the concept of “same ownership” instead of the similarity of one operation to the other, which would be an outcome of the NAICS code application. Further clarification on the application of same ownership is presented in the Draft Staff Report.

Comment: For a future change of ownership of a facility under same ownership, will the new owner receive the same proposed exemptions for shutdowns as the previous owner?

Response: If there is a change of ownership, PAR 2002 paragraph (i)(13)(C) does allow the same ownership provisions to apply to a facility’s successors, provided there no expansion of facilities under the same ownership. For example, if Facility A and Facility B are under the same ownership and a new owner purchases both Facility A and Facility B, then Facility A and Facility B are considered to remain under the same ownership. However, Facility A and Facility B cannot ever be considered under the same ownership with any other facility.

De minimis level

Comment: The shutdown provisions should have de minimis level – possibly 4 tons per year. Smaller facility shutdowns would not carry the risk of a large influx of RTCs into the market.

Response: Staff analyzed emissions and holdings to better understand a “cut-off point” in which a facility, upon shutdown, would not introduce a large amount of RTCs into the market. Based on this analysis, staff is proposing to limit the proposed shutdown provisions to the larger facilities listed in Table 7 and 8 of Rule 2002.

Insufficient IYB available for surrender of RTCs

Comment: Upon shutdown, the RTCs sold prior to date of the Governing Board’s adoption of this proposed amendment should be excluded and only transactions recorded

within five (5) years of the facility shutdown should be required to surrender. If the facility cannot surrender RTCs, would there be a fine, possibly equivalent to the current market price?

Response: Because staff is proposing that only Table 7 and 8 facilities would be affected by this amendment there is only one facility, if shutdown, that would need to purchase RTCs in the open market. The maximum amount of RTCs that would be needed to be purchased by this facility would have an insignificant impact on the viability of the market (~0.4% of total holdings in Table 7 and 8 in 2022). On this basis, staff is proposing to retain this provision in PAR 2002. If the facility does not have sufficient holding and does not purchase them on the open market, it will be in violation of the rule requirements and subject to civil penalties as set forth in Health and Safety Code § 42402 et seq.

Comment: The proposed shutdown amendments to Rule 2002 will be introducing several new and wide-ranging provisions as they apply to previously sold RTCs. We are requesting the District clarify within the proposed amendments that these provisions will not be implemented on a retroactive basis.

Response: PAR 2002 (i)(1) states that the proposed shutdown provisions apply beginning date of adoption and will not be implemented on a retroactive basis.

Credit for going beyond BARCT

Comment: An additional provision is needed to credit installation of control equipment going beyond BARCT. A basic premise of RECLAIM is the incentive to install equipment beyond BARCT. The proposed amendments to Rule 2002 may discourage future investments in equipment beyond BARCT.

Response: The calculation for deducting RTCs from a facility's holdings is neutral for equipment that goes beyond BARCT. That is, there is no deduction or credit of RTCs for equipment beyond BARCT. PAR 2002 paragraph (i)(3) clarified the calculation methodology in that only equipment that emits above the new BARCT level is included in the calculation. Under staff's proposal, future investments continue to be encouraged in that the operator keeps holdings for equipment beyond BARCT. It should also be noted that, under command and control regulations, emission reduction credits (ERCs) are not issued for equipment that exceeds BACT.

Discrete year sales of RTCs during PNOs and during process of calculating amount of shutdown RTCs

Comment: Discrete RTCs should be allowed to be sold during the period in which a shutdown determination is being made by the Executive Officer.

Response: Staff agrees with the commenter that discrete RTCs within the current compliance year can be sold while the shutdown determination is being made. The greater concern being addressed by the proposed amendments is for long term compliance

decisions and IYB RTCs. To alleviate this concern, the proposed amended rule provides clarification that current compliance year RTCs can be sold prior to the Executive Officer notifying the owner or operator of the amount of RTCs that will be deducted or needed to be surrendered for the facility shutdown. This provision does not allow future compliance year RTCs to be sold during the period when the shutdown determination is being made by the Executive Officer.

Process for notifying facilities that they are being considered as shutdown

Comment: There should be an early notification from the SCAQMD to a facility that it is being considered as shutdown. There are several reasons a facility may appear to be but is not shut down and may not be encompassing of all situations.

Response: Staff agrees that there should be a more definitive process for notifying facilities that they are being considered as shutdown. Consequently, staff has incorporated an initial step to notify a facility that it is being considered as potentially shutdown and removed the provision that deems a facility shutdown if the Executive Officer does not respond. As part of the process, the facility will have the opportunity to justify, based on the criteria provided in the proposed amended rule, that the facility is not shutdown.

Determining temporary shutdown

Comment: There are many other situations constituting temporary shutdowns that are not listed in the proposed rule amendment. It is requested that the list be augmented to include other scenarios of temporary shutdowns.

Response: With regards to the reasons a facility owner or operator is shutting down equipment, staff has added criteria for determining a shutdown (instead of a list). This approach should cover more situations in which the equipment has been temporarily shut down.

Analysis of impact of shutdown provision on RECLAIM and comparison with command and control

Comment: The Governing Board at the December 2015 Public Hearing directed staff to return to the NO_x RECLAIM Working Group for further discussion and analysis of the December 2015 shutdown proposal's potential implications on the entire NO_x 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. Such an analysis needs to be shared with the Working Group members and be part of the Staff Report.

Response: The results of the analysis was presented at the August 30, 2016 Working Group and has been included in the Draft Staff Report.

Rule Enforcement

Comment: In instances of bankruptcy, would the SCAQMD become a creditor due to a failure to surrender RTCs? If so, how would the SCAQMD value RTCs under such a situation?

Response: The requirement to surrender RTCs only applies if the shutdown adjustment amount exceeds future year holdings. Currently, this only applies to one facility, although it could apply to more if future year holdings were sold off in an attempt to avoid reductions in holdings. The failure to surrender the RTCs would be a violation of the rule, whether the facility is in bankruptcy or not, and civil penalties would apply. Collection of civil penalties could be part of bankruptcy proceedings and the SCAQMD could become a creditor. The amount of the penalties would be determined through the civil penalty process, but would likely consider the value of RTCs.

Comment: Historical trading of Infinite Year Block (IYB) RTCs shows there are periods in the RECLAIM market where there are insufficient or simply no available IYB streams to meet demand. In these circumstances, companies meeting the facility shutdown criteria would not be able to secure sufficient RTCs for the surrender requirement. How would the SCAQMD enforce the provision in the event there are insufficient RTCs available? Would the SCAQMD require the RECLAIM facility to pay a fine equivalent to the market price of the surrender volume requirements? If so, how would those potentially substantial funds be appropriated?

Response: Because staff is proposing that only Table 7 and 8 facilities would be affected by this amendment there is only one facility, if shutdown, that would need to purchase RTCs in the open market. The maximum amount of RTCs that would be needed to be purchased by this facility would have an insignificant impact on the viability of the market (~0.4% of total holdings in Table 7 and 8 in 2022). On this basis, staff is proposing to retain this provision in PAR 2002. All affected facilities have been sent information about this rulemaking and should be aware of the shutdown provisions and be cautioned regarding selling IYB RTCs if they anticipating a facility shutdown.

Amerex Brokers LLC
One Sugar Creek Center Blvd.
Suite 700
Sugar Land, TX 77478



August 18, 2016

Attention: Philip M. Fine, PhD
Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178

Re: Enforcement Concerns Related to the Proposed Shutdown Provision

Dr. Fine,

We are writing to express our concerns and raise potential issues relating to enforcement of the proposed Shutdown Provision (Rule 2002 (i)).

Paragraph (i)(5) of the July 21, 2016 version of the Shutdown Provision states:

“If any RTCs that would have been reduced from the adjusted initial allocation pursuant to paragraph (i)(1) have been sold prior to the reduction, the Facility Permit Holder shall purchase and retire sufficient RTCs to fulfill the entire reduction requirement.”

Many potential situations may arise where RECLAIM market participants may sell initial allocations prior to shutdown, including a sale of IYBs to fund pollution control projects. It is our understanding such companies under Paragraph (i)(5) would be required to purchase the volume requirements of Paragraph (i)(1) from the open market and then surrender these volumes to the SCAQMD.

1. In instances of bankruptcy, would the SCAQMD become a creditor due to a failure to surrender RTCs? If so, how would the SCAQMD value RTCs under such a situation?
2. Historical trading of Infinite Year Block (IYB) RTCs shows there are periods in the RECLAIM market where there are insufficient or simply no available IYB streams to meet demand. In these circumstances, companies meeting Paragraph (i)(5) criteria would not be able to secure sufficient RTCs for the surrender requirement. How would the SCAQMD enforce the provision in the event there are insufficient RTCs available? Would the SCAQMD require the RECLAIM facility to pay a fine equivalent to the market price of the surrender volume requirements? If so, how would those potentially substantial funds be appropriated?

Without defining a clear, universally applicable method for calculating the monetary value of the RTC surrender requirements, in the likely event that RTCs are unavailable to purchase, the above examples represent realistic challenges in the enforcement of the Shutdown Provision.

Best Regards,

Mithun Rathore
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**California Council for Environmental and Economic Balance**

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August 26, 2016

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

RE: Proposed RECLAIM Amendments – Shutdown Provisions

Dear Mr. Quinn:

We are pleased to submit the following comments on behalf of the California Council for Environmental and Economic Balance (“CCEEB”). CCEEB is a non-profit, non-partisan association of business, labor, and public leaders, which advances balanced policies for a strong economy and a healthy environment. CCEEB represents major mobile and stationary sources across California and is an active stakeholder at the South Coast Air Quality Management District (“SCAQMD”). Many of our members participate in the REgional CLean Air Incentives Market (“RECLAIM”) Program. We offer the following comments for your consideration on the issue of permanently removing RECLAIM Trading Credits (“RTCs”) associated with facility shutdowns from the RECLAIM credit market:

1. Need for Analysis of Potential Impacts of Proposal

CCEEB had strong concerns with the language on shutdown credits that staff brought to the Board at its December 4, 2015 meeting. This was, and continues to be, a significant issue to our members and to the RECLAIM program as a whole. We were pleased that the Board adopted a resolution that states in part:

Subparagraph (i) of Rule 2002 that was originally proposed by staff on November 4, 2015 and released in rewritten form on November 28, 2015 is NOT adopted at this time. Staff shall return it 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.

The current proposal focuses on full facility shutdowns, as compared to the December proposal that looked at partial facility or equipment shutdowns. This is an improvement.

Mr. Gary Quinn, P.E.
August 26, 2016
Page 2

That said, we look forward to seeing the analysis as directed by the Board in the resolution shown above.

2. Effective Date of Amendment

CCEEB recommends the date of Board adoption as the effective date of this amendment.

3. Credit for Going Beyond BARCT

Section 1 of the proposal provides the calculation to determine a shut-downed facility's available RTCs, after adjusting for BARCT. Sections 2 provides language for a further reduction to the initial BARCT-adjusted NO_x allocation based on any offsets provided by the SCAQMD pursuant to Rule 1304.

CCEEB believes an additional provision is needed to credit back to the facility any emission reductions that resulted from installation of control equipment going beyond BARCT. One of the basic premises of the RECLAIM program is the incentive for facilities to install equipment beyond BARCT. We do not believe it is appropriate to penalize a facility for this type of investment at the time of closure. We are also concerned that without such a provision, the District may inadvertently discourage future investments in beyond-BARCT control technologies.

4. Recognition of "Common Ownership"

CCEEB is pleased to see that the proposal recognizes the importance of common ownership and allows the transfer of RTCs between commonly owned facilities. The current language proposes the use of the 6-digit North American Industry Classification System (NAICS) to determine common ownership. We believe this approach is too restrictive and would unfairly limit many facilities from the use of this provision. Instead, we suggest the following language, which we believe still meets the objectives of the District:

(6) The requirements specified in this subdivision shall not apply to facility shutdowns where the RTCs are transferred to another facility that is under common ownership, including parent or subsidiary thereof, at the time of rule adoption.

5. Planned Non-Operational (PNO) Status - Discrete Credits

In the current proposal, all NO_x RTCs from facilities with PNO status become non-tradable. CCEEB believes that this trade restriction should only apply to trades of infinite year blocks (IYBs). The shutdown rule is intended to prevent transactions that delay the installation of BARCT because of the sudden availability of a large influx of RTCs that become available from the shutdown of a large facility. Individual year (discrete) credits do not give a facility the operational assurance that IYB holdings provide. Therefore, we do not believe the sale of discrete RTCs will interfere with BARCT installations. However, the fluctuation of supply created by suspending and then unsuspending RTCs could be disruptive to the market and lead to volatility.

Mr. Gary Quinn, P.E.
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6. De-Minimus Levels

As stated above, CCEEB understands that the goal of the shutdown rule is to avoid the delay of BARCT installations due to large shutdowns providing a large influx of RTCs into the market. Smaller facility shutdowns would not carry this same risk and would be cumbersome within the administration of SCAQMD under the program. There is additional concern that smaller facilities may not sell IYBs due to the risk involved with the shutdown provision, which could impede new growth in the SCAQMD region. Without the incentive of being able to sell IYBs, these facilities have little incentive to install controls, effectively removing the upside of a market-based program. CCEEB recommends that the shutdown rule apply only to Table 7 & Table 8 facilities.

We would be pleased to meet with you and your colleagues should you wish to discuss any of our comments in greater detail.

Thank you for considering our views.

Sincerely,



William J. Quinn
Chief Operating Officer

cc: Mr. Wayne Nastri, SCAQMD Acting Executive Officer
Dr. Philip Fine, SCAQMD Deputy Executive Officer
Mr. Tracy Goss, SCAQMD Manager
Mr. Gerald Secundy, CCEEB President
Ms. Janet Whittick, CCEEB Policy and Communications Director
Members, CCEEB's South Coast Air Project



August 26, 2016

Gary Quinn, P.E.
Program Supervisor
South Coast Air Quality Management District
21865 East Copley Drive
Diamond Bar, CA 91765

Re: Comments on Proposed Revisions to Regulation XX – NOx RECLAIM

Dear Mr. Quinn,

California Construction & Industrial Materials Association (CalcIMA) appreciates the opportunity to comment on the South Coast Air Quality Management District's (District) Regulation XX – NOx RECLAIM pursuant to PAR 2002 'facility shutdown' provisions. Moving the District's air basin into attainment is a step toward improved air quality and improved economic growth by increasing the ability of businesses to operate in this region.

CalcIMA is a statewide trade association representing construction and industrial material producers in California. Our members supply the materials that build our state's infrastructure, including public roads, rail, and water projects; help build our homes, schools and hospitals; assist in growing crops and feeding livestock; and play a key role in manufacturing wallboard, roofing shingles, paint, low-energy light bulbs, and battery technology for electric cars and windmills.

In order to further supplement the District's regulation, CalcIMA has drafted the following comments and recommendations for your review and consideration.

Due to the 'facility shutdowns' section of NOx RECLAIM implementing new and wide-ranging provisions, we are requesting the District clarify that these provisions will not be implemented on a retroactive basis by adding the following language:

(i)(5) If any RTCs that would have been reduced from the adjusted initial allocation pursuant to paragraph (i)(1) have been sold prior to the reduction, the Facility Permit Holder shall purchase and retire sufficient RTCs to fulfill the entire reduction requirements. This provision will not be implemented retroactively to adoption of this language.

The North American Industry Classification System (NAICS) classifies business establishments according to type of economic activity via the processes of production. NAICS uses a six-digit coding system to identify particular industries and their placement in the hierarchical structure of the classification system. Due to some variabilities with processes of production within a single sector for a RECLAIM participant, it is recommended that only the first two digits of NAICS be considered pursuant to the transfer of RTCs from one facility to another under common ownership.

(i)(6) The requirements specified in this subdivision shall not apply to facility shutdowns where the RTCs are transferred to another facility under common ownership that conducts the same functions at another facility with the same 26-digit North American Industry Classification System (NAICS) designation.

In order to further clarify the term ‘cyclical operations’ the addition of the language below is suggested.

(i)(7) In addition to self-reported facility shutdowns, the Executive Officer will determine a NO_x RECLAIM facility to have shut down if the facility has been non-operational for a period of two consecutive years or longer, based on APEP reports. A facility is deemed to be non-operational if NO_x emissions in any compliance year are less than 10 percent of the maximum annual NO_x emissions in the previous 2 compliance years, excluding:
(A) Cyclical operations that are sensitive to economic fluctuations in conjunction with facility equipment;

To circumvent any unintentional hindrances of the District Executive Officer’s notification of a facility being deemed as shutdown to the Facility Permit Holder, we suggest allowing the Facility Permit Holder 60 days in lieu of 30 days to submit information to demonstrate the preliminary determination did not adequately consider any applicable factors. Accordingly, the language modification in the two sections below is suggested.

(i)(8) In accordance to paragraph (i)(7), the Executive Officer will notify the Facility Permit Holder with a preliminary determination that their facility has been deemed as shutdown. The Facility Permit Holder shall submit within ~~60~~ 30 days of the preliminary determination a plan application and provide information to demonstrate the preliminary determination did not adequately consider any of the factors listed under Subparagraphs (i)(7)(A) through (D). The Executive Officer shall evaluate the plan application and provide a final determination within 60 days of plan submittal.

(i)(10) Within ~~60~~ 30 days of the preliminary determination of the facility shutdowns as specified in paragraph (i)(7), the Facility Permit Holder may submit a plan application to request planned non-operation (PNO) status for a non-operational time period of no longer than 5 years for equipment within the facility. The Executive Officer shall consider the criteria in paragraphs (i)(6) and (i)(7) for approving the plan. All of the referenced criteria shall require company records to support the claim that a PNO status of no longer than 5 years is necessary and meets the criteria of this paragraph. Executive Officer approval for this PNO shall be obtained within 6 months of receiving the plan application. Otherwise, the facility shall be deemed shutdown and subject to the requirements specified in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5). If granted, the facility’s NO_x RTCs shall become non-tradable for the duration of the PNO status. Executive Officer denial of a PNO plan application may be appealed to the Hearing Board.

CalCIMA is highly encouraged that the District and other entities may implement incentive programs to assist with funding the accelerated deployment of cleaner equipment that improve our basin's air quality. In order to best fulfill the objective of incentive programs, we suggest that RTCs are not relinquished as a result of Facility Permit Holders participation in these programs by adding the language below.

(i)(13) Facility Permit Holders that participate in incentive programs to accelerate deployment of cleaner equipment will not be required to surrender associated RTCs.

CalCIMA respectfully asks the District to consider our comments. Please contact me with any questions or concerns at (951) 941-7981 or at sseivright@calcima.org.

Sincerely,



Suzanne Seivright
Director of Local Governmental Affairs

August 26, 2016

Mr. Gary Quinn, P.E.
Planning, Rule Development and Area Sources
South Coast Air Quality Management District
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Diamond Bar, California 91765



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Subject: Proposed RECLAIM Amendments – Shutdown Provisions

Dear Mr. Quinn:

We appreciate the opportunity to offer comments on the proposed RECLAIM amendments. Our comments are limited to two sections of the proposed shutdown provisions: replacement of previously sold credits and common ownership provisions.

Replacement of Previously Sold Credits

(i)(5) If any RTCs that would have been reduced from the adjusted initial allocation pursuant to paragraph (i)(1) have been sold prior to the reduction, the Facility Permit Holder shall purchase and retire sufficient RTCs to fulfill the entire reduction requirement.

This requirement should be removed or made more equitable by including an applicability date. The adjustments outlined in (i)(1)-(4) will remove RTCs from the RECLAIM universe, causing a need for sooner installation of BARCT at other RECLAIM facilities and greater emissions reductions, and they achieve the objectives of closer alignment with ERC shutdown credits.

If the SCAQMD is interested in fair treatment to facilities, there can be no real equity if (i)(5) is retained. The following list of considerations is not exhaustive, but it should bring to light some of the issues that are raised by a requirement to purchase and retire sufficient RTCs that may have been sold prior to shutdown:

- In many cases RTCs may have been sold so many years ago, that the current owner of a RECLAIM facility may have little or no knowledge of the decision-making process that led to the sale and never profited from the sale;
- Proceeds from RTCs may have been invested into the company to install BARCT or newer, lower emissions equipment;
- This provision was never a condition of RTC sales, and the nature of buying and selling RTCs would have been considerably different if facilities knew that they would have to re-purchase RTCs in order to shut down.
- Current demand for available RTCs and RTC pricing are likely much higher than when many RTCs may have been previously sold by a facility that is shutting down.

If the SCAQMD is determined to retain (i)(5), an applicability date that is no sooner than rule amendment adoption must be added to section (i).

Mr. Gary Quinn, P.E.
SCAQMD

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August 26, 2016

Common Ownership Provisions

(j)(6) The requirements specified in this subdivision shall not apply to facility shutdowns where RTCs are transferred to another facility under common ownership that conducts the same functions at another facility with the same 6-digit North American Industry Classification System (NAICS) designation.

The idea that an owner of multiple facilities should maintain ownership of RTCs is appropriate; however, the idea that the facilities must be classified under the same 6-digit North American Industry Classification System (NAICS) designation is overly restrictive. Furthermore, the justification postulated by AQMD staff is unfounded.

It is inconceivable that RTCs will become so valuable that business owners would be willing to purchase an entire facility just so that they can shut down that facility to obtain its RTCs. If RTCs reach that level of scarcity, then it is likely there are so few RTCs left in the RECLAIM universe that the RECLAIM program has run its course and is no longer viable.

Conversely, there are current (and future) facility owners who have multiple facilities that may not be classified by the same NAICS code. A printer may decide that it could be profitable to own a paper making facility, or the manufacturer of a product might find it useful to also own a packaging facility. Are such business owners to be treated differently or penalized, just because they have a diversified business?

Thank you for your consideration.

Sincerely,

ES Engineering Services, LLC



Marnie Dorsz
Senior Scientist
Engineering & Regulatory Compliance Services Division

Rule 2002 Proposed Amendments - Comments





NRG Energy, Inc.
West Region
5790 Fleet Street, Suite 200
Carlsbad, CA 92008

August 26, 2016

via email to gquinn@aaqmd.gov

Gary Quinn, PE
Planning, Rule Development and Area Sources
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Subject: Proposed RECLAIM Amendments – Shutdown Provisions

Dear Mr. Quinn:

On behalf of our Los Angeles Basin stationary source facilities (El Segundo Generating Station, Etiwanda Generating Station, Long Beach Generating Station and Walnut Creek Energy Park), NRG Energy (NRG) appreciates the opportunity to comment on the proposed amendments to South Coast Air Quality Management District's (SCAQMD) Regulation XX - Regional Clean Air Incentives Market (RECLAIM). NRG is one of the nation's largest independent power producers; headquartered in Princeton, New Jersey, our diverse power generating facilities can generate approximately 50,000 megawatts from solar, wind, fossil and nuclear resources - enough to support nearly one-third of U.S. population. Our California fleet consists of more than 11,000 MW of new combined cycle and peaking generation, legacy once-through cooling generation, large-scale solar and wind, and combined heat and power.

Our operating generation in El Segundo, Long Beach and City of Industry (i.e., Walnut Creek Energy Park) that participates in RECLAIM has been recently installed – 2013, 2007, and 2013, respectively and utilizes Best Available Control Technology. Our generation in Rancho Cucamonga (i.e., Etiwanda Generating Station) consists of two stream boiler units cooled by recycled water and utilizes Best Available Retrofit Control Technology.

NRG has been a stakeholder in the RECLAIM amendments since 1998, including the December 2015 amendment and the recently proposed amendments to the RECLAIM facility shutdown provisions. We fully support the California Council for Environmental and Economic Balance's (CCEEB) comments in its August 26, 2016 letter; CCEEB represents major mobile and stationary sources across California and is an active stakeholder at the SCAQMD.

NRG's specific comments are below:

1. Applicable to Full RECLAIM Facility Shutdowns. SCAQMD's current proposal focuses on full facility shutdowns with respect to management of adjusted initial allocation of RECLAIM Trading Credits (RTCs), as compared to the December 2015 proposal that sought the surrender of facility RTCs for partial facility or equipment shutdowns. SCAQMD also clarified that the respective RECLAIM facilities would continue to be shaved according to the schedule in the December 4, 2015 amendment, adjusted to BARCT as applicable, and would not be subject to full surrender of its adjusted initial allocation of RTCs. NRG supports these provisions of the current proposal with respect to facility shutdowns.

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2. RECLAIM Amendment Effective Date. NRG recommends the date of Board adoption (currently scheduled for October 7, 2016) as the effective date of the current proposed RECLAIM amendment as opposed to the December 4, 2015 adoption date of the recent amendments or the RTC account freeze date of September 22, 2015, or any date earlier. These alternative effective dates have been discussed in the RECLAIM workshops and NRG has given oral comments recommending the Board adoption date as the effective date.
3. Recognition of "Common Ownership." NRG supports that the proposal recognizes the importance of common ownership and allows the transfer of RTCs between commonly owned facilities. The current language proposes the use of the 6-digit North American Industry Classification System (NAICS) designation to determine common ownership. We believe this approach is too restrictive. Below we have offered alternative language:

(6) The requirements specified in this subdivision shall not apply to facility shutdowns where the RTCs are transferred to another facility that is under common ownership, including parent or subsidiary thereof, at the time of rule adoption.

We also recommend that RTCs transferred to such common ownership not be modified as non-tradable RTCs – a provision that we understand SCAQMD staff has contemplated.

4. Planned Non-Operational (PNO) Status - Discrete Credits. In the current proposal, all NOx RTCs from facilities in PNO status become non-tradable. NRG recommends that the proposal should not affect discrete year block RTCs, which enable the respective facility's to participate in market, including supporting its other RECLAIM facilities within the Los Angeles Basin while the applicable owner maintains its current PNO status. If and when the facility emerges from its PNO status, it may continue to participate in the market with respect to infinite year and discrete year block RTC.

We appreciate the open communication of SCAQMD staff during these important proposed RECLAIM amendments. If you have any questions, please contact me at george.piantka@nrg.com or 760-710-2156 at your convenience.

Best Regards,



George L. Piantka
Sr. Director, Regulatory Environmental Services
NRG Energy, West Region

cc: Dr. Phillip Fine, SCAQMD Deputy Executive Officer
Tracy Goss, SCAQMD Manager
Kevin Orellana, SCAQMD AQ Specialist



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; NO_x 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 NO_x 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

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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 NO_x 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

Mr. Gary Quinn
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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



Karin Fickerson
Air Quality Team Leader
Environmental Services
Southern California Gas Company
1171 More Ranch Road, SC9080
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KFickerson@semprautilities.com

August 26, 2016

Mr. Tracy Goss
Planning and Rules Manager
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Submitted via email: tgoss@aqmd.gov

Subject: Comments on the Draft RECLAIM Shutdown Provisions

Dear Mr. Goss:

Southern California Gas Company (SoCalGas) appreciates the opportunity to provide comments on the South Coast Air Quality Management District's (SCAQMD) Draft Oxides of Nitrogen (NO_x) REgional CLean Air Incentives Market (RECLAIM) Facility Shutdown Provisions of Rule 2002 - Allocations for NO_x and Oxides of Sulfur (SO_x). SoCalGas has several facilities that are part of the RECLAIM program.

Proposed Amended Rule (PAR) 2002(i)(6)

We appreciate that the proposed amendments acknowledge common ownership and allow for the transfer of RECLAIM Trading Credits (RTCs) between commonly owned facilities. The proposal is based on the North American Industry Classification System (NAICS) designation which uses up to 6-digits. The SoCalGas facilities fall under the Standard Industrial Classification (SIC) system major group 49: Electric, Gas, And Sanitary Services; and span several 4-digit SIC codes. Therefore, the 6-digit NAICS designation is too specific and would unnecessarily disqualify some of the SoCalGas facilities. The SIC system major group designations of 2-digits would be more appropriate.

PAR 2002(i)(6) currently states: "The requirements specified in this subdivision shall not apply to facility shutdowns where the RTCs are transferred to another facility under common ownership that conducts the same functions at another facility with the same 6-digit North American Industry Classification System (NAICS) designation."

Mr. Tracy Goss
SCAQMD
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We request that PAR 2002(i)(6) be revised to provide for a broader definition of common ownership. Specifically, we suggest the following language: "The requirements specified in this subdivision shall not apply to facility shutdowns where the RTCs are transferred to another facility under common ownership that conducts the same functions at another facility with the same ~~6-digit North American Industry Classification System (NAICS)~~ 2-digit Standard Industrial Classification (SIC) designation."

Proposed Amended Rule (PAR) 2002(i)(7)

The current proposal focuses on full facility shutdowns rather than the partial facility and equipment shutdowns considered in the December 2015 proposal. In light of these language improvements, we offer further refinements related to the criteria for determining a facility shutdown. Specifically, SoCalGas is in the process of constructing the Aliso Canyon Turbine Replacement (ACTR) project at the Aliso Canyon Storage Field. The scope of the ACTR project is to replace existing compression capabilities comprised of three natural gas fired turbine driven compressors with three new electric-driven compressors.

Since the Aliso Canyon facility as a whole may experience a reduction in NO_x emissions on the order of 90% once the ACTR project is completely implemented, we are focusing these comments on the criteria for what constitutes a shutdown facility. The intent of the comments is to avoid the unintended consequences of deterring facility actions to reduce NO_x emissions.

PAR 2002(i)(7) currently states: "In addition to self-reported facility shutdowns, the Executive Officer will determine a NO_x RECLAIM facility to have shut down if the facility has been non-operational for a period of two consecutive years or longer, based on APEP reports. A facility is deemed to be non-operational if NO_x emissions in any compliance year are less than 10 percent of the maximum annual NO_x emissions in the previous 2 compliance years, excluding:

- (A) Cyclical operations in conjunction with facility equipment;
- (B) Delay in the availability of parts used to repair the shutdown equipment;
- (C) Equipment that must be placed in a reserve status until remaining operations at the facility are recommissioned requiring the reinstatement of this equipment; or
- (D) Emission reductions due to implementation of add-on NO_x emission controls."

We request that PAR 2002(i)(7)(D) be revised to include electric equipment that has been installed to replace fuel-burning equipment in whole or in part, in other words electrification that results in a reduction in NO_x emissions. Specifically, we suggest the following language: "(D) Emission reductions due to implementation of ~~add-on~~ NO_x emission reduction projects ~~controls~~ including, but not limited to near zero and zero emissions technology."

Mr. Tracy Goss
SCAQMD
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Effectiveness Date

To avoid potential confusion on past RTC trades, we feel that the date on which the Shutdown Provisions would freeze allocations subject to discounting should be the same date as the Board approval date of PAR 2002 (i.e., October 2016).

We would welcome the opportunity to meet with you and your colleagues to discuss these comments further.

Respectively submitted,



Karin Fickerson
Air Quality Team Leader

cc: Mr. Gary Quinn, SCAQMD, Planning, Rule Development and Area Sources
Dr. Phillip Fine, SCAQMD, Deputy Executive Officer
Mr. Noel Muyco, SoCalGas, Environmental Affairs Program Manager
Mr. Phil Baker, SoCalGas, Director of Storage
Mr. Tim Bomberger, SoCalGas, Aliso Storage Operations Manager



VIA ELECTRONIC MAIL

August 26, 2016

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

SUBJECT: Tesoro Comments on NOx RECLAIM Shutdown Credits

Dear Mr. Quinn:

Tesoro Refining & Marketing Company LLC operates the Los Angeles Refinery, and has four NOx RECLAIM facilities that can be impacted by any change to the RECLAIM program. We are submitting comments today on the issue of permanently removing RECLAIM Trading Credits (RTCs) associated with facility shutdowns from the RECLAIM credit market.

- 1) Several entities, including Tesoro, have commented that any rule amendments regarding treatment of RECLAIM Trading Credits (RTCs) from shutdown facilities should recognize the unique situation of facilities under common ownership. The current draft of proposed amendments to Rule 2002 does attempt to address this issue, but is unnecessarily restrictive and would exclude many facilities under common ownership from using shutdown credits from a sister facility as a compliance mechanism. As a result of stakeholder feedback, SCAQMD has requested suggestions for a different approach, and in particular definitions for "integrated operations" and "common control".

Tesoro has the following recommendations:

- Modify 2002(i)(6) to read as follows: “the requirements specified in this subdivision shall not apply to facility shutdowns where RTCs are transferred to another facility **with integrated operations and/or under common control**”.
 - Add a definition for “**Integrated operations**”, with the following description: “Integrated Operations means RECLAIM facilities owned or operated by the same company and whose operations are interconnected or dependent on each other. Contiguous location is not necessary to demonstrate integrated operations.”
 - Add an explanation of “**common control**” to the staff report. Excerpts from an USEPA letter (vintage 1995, and referenced by USEPA in other communications), provided by weblink and as an attachment to this letter, would be useful in this regard. While the 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 still germane without the need for facilities to be co-located.
<https://www.epa.gov/sites/production/files/2015-08/documents/control.pdf>
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”.
- 2) As mentioned in our previous comment letter on this subject (June 29, 2016), Tesoro requests that staff analyze the potential implications of how shutdown credits being discounted or even potentially totally confiscated will affect the entire RECLAIM program. Such an analysis would fulfill the Governing Board’s directive issued on December 4, 2015, and should be available at a minimum as part of the set hearing package. A more preferable approach would be to include such an analysis within the context of the 2016 AQMP, which contains a control measure for NO_x RECLAIM. That control measure casts a broad net in looking at not only a potential BARCT shave, but other options ranging all the way to transitioning out of the RECLAIM program completely. It would be entirely justified to include shutdown credits in this wide-ranging review of the RECLAIM program, rather than review and act on it in isolation. Tesoro requests that the shutdown credit issue be incorporated into the larger review of the RECLAIM program.

Tesoro is glad to further discuss these comments and recommendations with you and your colleagues.

Sincerely,

Susan Stark

Susan Stark
Senior Manager, Regulatory Issues

cc: Mr. Wayne Nastri, SCAQMD Acting Executive Officer
Dr. Phil Fine, SCAQMD Deputy Executive Officer



Western States Petroleum Association

Credible Solutions • Responsive Service • Since 1907

Sue Gornick
Manager, SoCal Technical

VIA ELECTRONIC MAIL

August 8, 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.

WSPA appreciates the opportunity to provide comments on the proposed amendments to Regulation XX - Regional Clean Air Incentives Market (RECLAIM) released for public comment on 22 July 2016. WSPA and its members continue to have some comments and concerns regarding the proposed amendments.

1. Proposal Amended Rule (PAR) 2002 Section (i)(6) should be revised so that RECLAIM Trading Credits (RTC) can be transferred to another facility with integrated operations and under common ownership as of the date of adoption of these rule amendments.

WSPA supports Staff's intention to allow businesses to transfer RTCs to another facility under common ownership.¹ A company might choose to do this for a number of operational reasons, such as consolidating operations to increase efficiency. However, the draft language limiting such transfers to a

¹ SCAQMD, Preliminary Draft Staff Report, Proposed Amendments to Regulation XX – Regional Clean Air Incentives Market, NO_x RECLAIM, July 2016. See page 9.

“facility with the same 6-digit North American Industry Classification System (NAICS) designation” is too restrictive for certain industries. In some cases, a single company’s operations could be covered by several different NAICS codes, even when part of an integrated operation. Since the intent is to allow companies some operational flexibility, we would recommend that PAR 2002 Section (i)(6) be revised to allow RTCs to be transferred to another facility with integrated operations and under common ownership as of date of adoption.

WSPA recommends the following revisions to the rule language:

(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 under common ownership as (INSERT ADOPTION DATE), ~~that conducts the same functions at another facility with the same 6-digit North American Industry Classification System (NAICS) designation.~~

2. 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.

3. 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

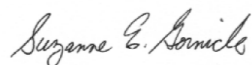
- (5) If any RTCs that would have been reduced from the adjusted initial allocation pursuant to paragraph (i)(1) have been sold *after [INSERT ADOPTION DATE] and within the last five (5) years* prior to the reduction, the Facility Permit Holder shall purchase and retire sufficient RTCs to fulfill the entire reduction requirement.
4. 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 NO_x RECLAIM shave states that the shutdown credit rule language shall be returned "to the NO_x RECLAIM Working Group for further discussion and **analysis of that proposal's potential implications on the entire NO_x 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,





Western States Petroleum Association
Credible Solutions • Responsive Service • Since 1907

Sue Gornick
Manager, SoCal Technical

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) NOx 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.

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WSPA recommends the following revisions to the rule language:

(i) Facility Shutdowns

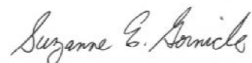
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3. Board requested analysis of shutdown credit rule language should be prepared, made public and considered as part of rule development.

The December 4, 2015 Board resolution language for the NO_x RECLAIM shave states that the shutdown credit rule language shall be returned "to the NO_x RECLAIM Working Group for further discussion and **analysis of that proposal's potential implications on the entire NO_x 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."

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Thank you for your consideration of these comments.

Sincerely,





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

 REGION VII
 726 MINNESOTA AVENUE
 KANSAS CITY, KANSAS 66101

SEP 18 1995

 CON 10-22
 Prevention of
 Significant
 Deterioration
 CS

Peter R. Hamlin, Chief
 Air Quality Bureau
 Iowa Department of Natural Resources
 Henry A. Wallace Building
 900 East Grand
 Des Moines, IA 50319

Dear Mr. Hamlin:

Recently, several questions have been raised about whether new facilities that locate on the site of a present major stationary source should be considered part of the existing major source or as a separate entity. In particular, concerns center around the question of control as interpreted under the New Source Review program. According to EPA's definition of a stationary source, "a building, structure, facility, or installation means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) ."

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.

Typically, companies don't just locate on another's property and do whatever they want. Such relationships are usually governed by contractual, lease, or other agreements that establish how the facilities interact with one another. Therefore, we presume that one company locating on another's land establishes a "control" relationship. To overcome this presumption, the Region requires these "companion" facilities, on a case by case basis, to explain how they interact with each other. Some of the types of questions we ask include:

Do the facilities share common workforces, plant managers, security forces, corporate executive officers, or board of executives?



Do the facilities share equipment, other property, or pollution control equipment? What does the contract specify with regard to pollution control responsibilities of the contractee? Can the managing entity of one facility make decisions that affect pollution control at the other facility?

Do the facilities share common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions?

Do the facilities share intermediates, products, byproducts, or other manufacturing equipment? Can the new source purchase raw materials from and sell products or byproducts to other customers? What are the contractual arrangements for providing goods and services?

Who accepts the responsibility for compliance with air quality control requirements? What about for violations of the requirements?

What is the dependency of one facility on the other? If one shuts down, what are the limitations on the other to pursue outside business interests?

Does one operation support the operation of the other? what are the financial arrangements between the two entities?

The list of questions is not exhaustive; they only serve as a screening tool. If facilities can provide information showing that the new source has no ties to the existing source, or vice versa, then the new source is most likely a separate entity under its own control. However, if the facilities respond in the positive to one or more of the major indicators of control (e.g. management structures, plant managers, payroll, and other administrative functions), then the new company is likely under the control of the existing source, or under common control by both companies, and cannot be considered a separate entity for permitting purposes. Absent any major relationships, the new facility may still be considered to be under the control of the existing source if a significant number of the indicators point to common control.

If after asking the obvious control questions the permit authority has any remaining doubts, it may be necessary to look at contracts, lease agreements, and other relevant information. EPA's Dun and Bradstreet Retrieval System, available to anyone with mainframe access, is also useful for exploring any parent-subsidiary relationships and common corporate management

structures. Using these tools, we have found at least one case where a company set up an "unrelated" corporation in the middle of their property to split the property into multiple, distinct sites. After concluding that these "distinct" sites were in fact under the common control of the companion company's president, the split was later disallowed for permitting purposes.

The permit authority should be cautious of any short term or interim contracts that establish separate operating companies or separate operations on noncontacting parcels of land. While not likely, it is conceivable that such contracts could be used to shield the company's true intents. For example, a company may seek to avoid major new source review requirements in the short term, but merge later on to take advantage of the netting provisions. If the company's motives are unclear, but the permit authority elects to permit as two sources, we would encourage adding a condition to the permit requiring notification if the two sources merge operations. If the merger occurs within a short time frame, say two years, after permit issuance, the department may want to investigate such activities as circumvention of the major source permitting requirements and take the appropriate action.

If the affected sources are reluctant or refuse to provide documentation satisfactory to the permit authority, and the company's permit application is pending, then the permit authority may elect to find the permit application incomplete. If an application has not been submitted, then we recommend that the permit authority seek the necessary information under its statutory authorities.


Our approach to looking at control is based in part on regulatory background information, prior EPA guidance materials, common sense, and limited formal decisions on the matter. While no one single document answers the questions at hand, we encourage you and your staff to review the references listed in Table 1. Most are available on the New Source Review portion of the Technology Transfer Network Bulletin Board System.

We seriously urge you to consider the principles found in the various guidance documents and in this letter when evaluating requests to split properties for permitting purposes. We realize that in many cases it is easier not to second guess a company's motives. However, we also believe this administratively expedient approach can result in allowing circumvention of the permit requirements and ultimately jeopardize the goals and effectiveness of the permitting programs. This guidance has been reviewed by the Information Transfer and Program Integration Division, Office of Air Quality Planning and Standards, and

4

incorporates their suggestions and concerns. If you have any questions or need further advice, please contact our New Source Review team; Dan Rodriguez 913-551-7616, Ward Burns 913-551-7960, or Jon Knodel 913-551-7622.

Sincerely,


William A. Spratlin
Director
Air, RCRA, and Toxics Division

Enclosure

cc: Christine Spackman, IDNR
Chuck Layman, KDHE
Randy Raymond, MDNR
Shelly Kaderly, NDEQ
David Solomon, OAQPS
Michele Dubow, OAQPS

Table 1. References on Common Control

"Definition of Source," March 16, 1979
The preamble to the August 7, 1980 PSD regulations, 45 FR
52693-52695
"PSD Applicability Request (General Motors)," June 30, 1981

"PSD Applicability Request, Valero Transmission Company,"
November 3, 1986
"PSD Applicability Determination for Multiple Owner/Operator
Point Sources Within a Single Facility (Denver Airport)
," August 11, 1989
"Comments on Draft Permit for Conoco Coker and Sulfur
Recovery Facility," March 22, 1990
"Definition of Source for PSD Purposes," August 22, 1991
"PSD Permit Remand, Reserve Coal Properties," July 6, 1992
"Temporary and Contracted Activities at Stationary Sources,"
John Seitz letter to Minnesota, November 16, 1994
"Watts Bar Nuclear Plant Title V Applicability," Region 4,
June 5, 1995
"Site Specific Determination of Common Control for United
Technologies Corporation," Region 4, July 20, 1995
"Georgetown Cogeneration Project," Westy McDermid
Memorandum, date unknown



Western States Petroleum Association

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Sue Gornick
Manager, SoCal Technical

VIA ELECTRONIC MAIL

September 2, 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.

WSPA's August 25, 2016 letter recommended 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).*

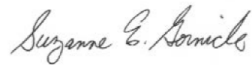
(a) Integrated Operations means RECLAIM Facilities which are owned or operated by the same company and whose operations are interconnected or interdependent. Integrated Operations may include RECLAIM Facilities which are located on non-contiguous properties within the District.

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 as detailed in WSPA’s August 25, 2016 letter.

The revised draft language dated August 30, 2016 uses the term “same ownership”; however, it is not defined in the rule. At the August 31, 2016 Working Group meeting, staff stated that this term would be defined in the staff report. WSPA also requests that the definition be included in the rule for future reference and ease of use. Additionally, WSPA requests that proposed paragraph (i)(13) be amended to read “same ownership and/or common control” to be consistent with the definitions found in existing AQMD rules as previously mentioned. Additionally, we request that rule language clearly state that facilities do not need to be contiguous to meet the definition of “same ownership and/or common control”. WSPA notes that staff indicated at the Working Group meeting their belief that same ownership does not require facilities to be contiguous so rule language clarification is consistent.

Thank you for your consideration of these comments.

Sincerely,



ATTACHMENT B: SAMPLE PLOTS FOR TABLE 7 AND 8 FACILITIES

Facilities that were provided with initial allocations

