Comment Letter #71

Michael J. Carroll
Direct Dial: (714) 755-8105
michael.carroll@lw.com

LATHAM & WATKINS LLP

650 Town Center Drive, 20th Floor
Costa Mesa, California 92626-1925
Tel: +1.714.540.1235 Fax: +1.714.755.8290
www.lw.com

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July 5, 2022

Via email

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

Re: Regulatory Flexibility Group ("RFG") Comments Regarding South Coast Air Quality Management District ("SCAQMD") 2022 Air Quality Management Plan

Dear Dr. Rees:

Thank you for the opportunity to submit these comments on the May 2022 draft of the South Coast Air Quality Management District's Air Quality Management Plan (the "2022 Draft AQMP") on behalf of the RFG, a coalition of California entities whose operations are subject to regulation under the Clean Air Act and corresponding state and regional air quality programs. RFG members include manufacturers, natural gas utilities, oil and chemical companies and other regulated entities. We are very grateful for the SCAQMD staff's careful review of our general comments submitted in March 2022, and the reflection of many of the principles we put forward in the 2022 Draft AQMP and associated Briefing Papers. We look forward to continuing to work with staff in advance of the Governing's Board's consideration of the AQMP later this year. Our remaining general comments follow.

Stationary Source NOx Incentives

As RFG members have previously shared with staff in the context of the various RECLAIM landing rules, the regulated community continues to face challenges in obtaining construction and operating permits for required control technology installations. Resolving fundamental New Source Review (NSR) issues as stationary sources transition from RECLAIM Regulation XX NSR to Regulation XIII NSR remains a critical path item to protect against unintended adverse environmental or economic impacts. We appreciate the inclusion of Control Measure FLX-02 (Stationary Source VOC Incentives) and the identified potential incentive concepts included in the Measure, and the stated commitment to investigating incentive funding, permitting and fee incentives and enhancements, NSR incentives and enhancements, CEQA incentives, branding incentives, and recordkeeping and reporting incentives. Appropriately implemented, these types of measures can help businesses offset regulatory compliance costs and

advance attainment objectives. Given the potential economic and environmental benefits of these types of incentive programs, we request a similar FLX measure for NOx. Exhibit A to this letter includes a proposed NOx incentive measure for staff's consideration.

Coordination of Control Measures and the RECLAIM Transition

RFG members have and continue to make significant investments to implement recently adopted/amended RECLAIM landing rules. We appreciate that the 2022 Draft AQMP acknowledges the need for technology assessments "to better understand where and when zero emission and low NOx technologies can be implemented." As we have previously indicated, these assessments must demonstrate that the proposed emission reduction can be achieved through technologically feasible means prior to adoption, and any new proposals must be evaluated in the context of controls installed or planned to implement recently adopted/amended RECLAIM landing rules to avoid inconsistent or duplicative regulation of stationary sources and take into account practical considerations such as space constraints within facilities. Applicable rulemakings should also evaluate the potential environmental impacts and legal factors associated with the proposed control measures and the RECLAIM transition to ensure that both programs are effectively and efficiently implemented and do not result in unintended adverse environmental or economic impacts (e.g., stranded assets). We offer proposed language for select draft control measures to address these concerns in Exhibit A.

Establishing a Cost-Effectiveness Threshold Cap

We appreciate that the 2022 Draft AQMP proposes cost effectiveness thresholds of $36,000 per ton of VOC and $59,000 per ton of NOx. We also recognize the SCAQMD's note in the 2022 Draft AQMP that, in connection with rulemakings associated with the 2016 AQMP, "emission standards that had controls that were well above the cost-effectiveness threshold were rejected with the goal of keeping the average cost-effectiveness for each class and category for equipment under the cost-effectiveness threshold." However, we are concerned that the 2022 Draft AQMP leaves open the possibility of adopting emission standards that exceed the cost-effectiveness thresholds. Given the economic and employment risk of further burdening stationary sources, we strongly urge staff to amend the 2022 Draft AQMP to indicate that the cost effectiveness thresholds for stationary sources **will function as a hard cap** (as opposed to a trigger for staff to "hold a public meeting to discuss other emission standards with a cost-effectiveness at or below the cost-effectiveness threshold and/or compliance or implementation options to address an emission standard that is above the cost-effectiveness threshold.")

Provision of Alternative Compliance Mechanisms When Implementing Control Measures

The final 2022 AQMP should direct that any future stationary source control measures contain appropriate alternative compliance mechanisms (e.g., an alternative compliance fee set at the relevant cost effectiveness threshold level and used to fund clean technologies or mass-based facility caps) to ensure that stationary sources have a ready compliance alternative when costs approach the threshold level. Alternative compliance approaches will also help address the technical feasibility concerns RFG members have communicated to the SCAQMD in the context of the RECLAIM landing rules. The final 2002 AQMP should further direct that the control measure review processes specify incremental cost-effectiveness scenarios and methodology and

identify industry-specific affordability issues. We have offered specific language to the draft control measures that we believe will implement these important concepts in Exhibit A.

Fuel Neutrality

As recognized in the 2016 AQMP, "[a]ir quality regulatory agencies have traditionally set policies and requirements that are performance-based, and thus technology- and fuel-neutral. This is a policy that the SCAQMD intends to continue."[1] This is critical. As we have consistently advocated, AQMPs should not pick winners and losers, but instead should force technologies to compete against one another to maximize air quality benefits and provide products that meet residential, commercial and industrial needs at reasonable costs. Technology and fuel neutrality promotes competition, which forces technologies to become cleaner and drives down prices. Importantly, technology and fuel neutrality also protects against price spikes and shortages, which can have devastating impacts on the economy. Based on our review of the 2022 Draft AQMP, we could not identify language expressly confirming that the SCAQMD intends to continue its technology- and fuel-neutral policy, and we respectfully request that the final 2022 AQMP expressly indicate that the SCAQMD in fact intends to continue this important policy. Again, we offer proposed language to address this request in Exhibit A.

Infrastructure and Grid Reliability

As previously communicated, we are concerned that the increasing load on the grid at the scale proposed under the 2022 AQMP will adversely impact the affordability, availability and reliability of the regional energy market. We appreciate the Briefing Paper prepared on Infrastructure and its identification of many of the challenges wide-scale deployment of near-zero and zero emission infrastructure faces in the South Coast Air Basin (and California more broadly). We are concerned, however, that the Briefing Paper does not appropriately detail the real cost and timing challenges associated with deployment of the infrastructure needed to achieve the identified emission reductions. These cost and timing challenges will come in many forms, including likely delays in wide-scale implementation driven by strategic litigation brought under CEQA. Given these realities, we recommend that the work plan contemplated by MOB-15 identify and develop proposed legislation and rulemaking to reduce litigation risk and the abuse of the environmental review process when public utilities and private parties make investments into grid reliability and scalable deployment of zero and near-zero emission support infrastructure. And beyond MOB-15, we support and encourage the District to fully explore any and all potential incentive funding sources through the stakeholder process over the next several years that would help offset costs and fund and facilitate grid reliability.

[1] SCAQMD, 2016 AQMP, March 2017, pp. 4-9.

Conclusion

Thank you for the opportunity to submit these comments and the proposed language in Exhibit 1. We look forward to further discussions with the SCAQMD staff and other stakeholders in advance of the Governing Board's consideration of the final AQMP.

Sincerely,

Michael J. Carroll

Michael J. Carroll
of LATHAM & WATKINS LLP

Enc.

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EXHIBIT 1: PROPOSED MODIFICATIONS TO THE DRAFT 2022 AQMP

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The Draft 2022 AQMP builds upon measures already in place from previous AQMPs. It also includes a variety of additional strategies such as regulation, accelerated deployment of available cleaner technologies (e.g., zero emission technologies, when cost-effective and feasible, and low NOx technologies in other applications), best management practices, co-benefits from existing programs (e.g., climate and energy efficiency), incentives, and other CAA measures to achieve the 2015 8-hour ozone standard. **Air quality regulatory agencies have traditionally set policies and requirements that are performance-based, and thus technology- and fuel-neutral. As it has with prior AQMPs, this is a policy that the SCAQMD intends to continue in this AQMP.**

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A. South Coast AQMD Proposed Stationary Source 8-Hour Ozone Measures

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TABLE 4-2

SOUTH COAST AQMD PROPOSED STATIONARY SOURCE 8-HOUR OZONE MEASURES

Number	Title [Pollutant]	Emission Reductions (tpd) (2032/2037)
South Coast AQMD Stationary Source NOx Measures:		
Residential Combustion Source Measures:		
R-CMB-01	Emission Reductions from Replacement with Zero Emission or Low NOx Appliances - Residential Water Heating [NOx]	0.48 / 1.29
R-CMB-02	Emission Reductions from Replacement with Zero Emission or Low NOx Appliances - Residential Space Heating [NOx]	0.45 / 1.20
R-CMB-03	Emissions Reductions from Residential Cooking Devices [NOx]	0.30 / 0.81
R-CMB-04	Emission Reductions from Replacement with Zero Emission or Low NOx Appliances - Residential Other Combustion Sources [NOx]	1.17 / 3.13
	Total Residential Combustion Source Reductions	**2.4 / 6.43**
Commercial Combustion Source Measures:		
C-CMB-01	Emission Reductions from Replacement with Zero Emission or Low NOx Appliances - Commercial Water Heating [NOx]	0.04 / 0.25

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Number	Title [Pollutant]	Emission Reductions (tpd) (2032/2037)
C-CMB-02	Emission Reductions from Replacement with Zero Emission or Low NOx Appliances - Commercial Space Heating [NOx]	0.04 / 0.21
C-CMB-03	Emission Reductions from Commercial Cooking Devices [NOx]	0.21 / 0.62
C-CMB-04	Emission Reductions from Small Internal Combustion Engines [NOx]	0 / 2.1
C-CMB-05	NOx Reductions from Small Miscellaneous Commercial Combustion Equipment (Non-Permitted) [NOx]	0 / 4.24
	Total Commercial Combustion Source Reductions	**0.29 / 7.42**
Large Combustion Source Measures:		
L-CMB-01	NOx Reductions from RECLAIM Facilities [NOx]	0 / 0.28
L-CMB-02	Reductions from Boilers and Process Heaters (Permitted) [NOx]	0 / 0.5
L-CMB-03	NOx Emission Reductions from Permitted Non-Emergency Internal Combustion Engines [NOx]	0 / 0.31
L-CMB-04	Emission Reductions from Emergency Standby Engines (Permitted) [NOx, VOCs]	0.0 / 2.0
L-CMB-05	NOx Emission Reductions from Large Turbines [NOx]	0 / 0.06
L-CMB-06	NOx Emission Reductions from Electricity Generating Facilities [NOx]	0.09 / 0.62
L-CMB-07	Emission Reductions from Petroleum Refineries [NOx]	0 / 0.77
L-CMB-08	NOx Emission Reductions from Combustion Equipment at Landfills and Publicly Owned Treatment Works [NOx]	0 / 0.33
L-CMB-09	NOx Reductions from Incinerators [NOx]	0 / 0.89
L-CMB-10	NOx Reductions from Miscellaneous Permitted Equipment [NOx]	0 / 1.16
	Total Large Combustion Source Reductions	**0.09 / 6.92**
FLX-03	**Stationary Source NOx Incentives [NOx]**	**TBD / TBD**

TABLE 4-2 (CONTINUED)

SOUTH COAST AQMD PROPOSED STATIONARY SOURCE 8-HOUR OZONE MEASURES

Number	Title [Pollutant]	Emission Reductions (tpd) (2032/2037)
South Coast AQMD Co-Benefits from Energy and Climate Change Programs Measures:		
ECC-01	Co-Benefits from Existing and Future Greenhouse Gas Programs, Policies, and Incentives [NOx]	TBD / TBD[b]
ECC-02	Co-Benefits from Existing and Future Residential and Commercial Building Energy Efficiency Measures [NOx, VOCs]	TBD / TBD
ECC-03	Additional Enhancements in Reducing Existing Residential Building Energy Use [NOx, VOCs]	TBD / TBD
South Coast AQMD Stationary Source VOC Measures:		
FUG-01	Improved Leak Detection and Repair [VOCs]	0.6 / 0.6
FUG-02	Emission Reductions from Industrial Cooling Towers [VOCs]	TBD / TBD
CTS-01	Further Emission Reductions from Coatings, Solvents, Adhesives, and Lubricants [VOCs]	0.5 / 0.5
FLX-02	Stationary Source VOC Incentives [VOCs]	TBD / TBD
BIO-01	Assessing Emissions from Urban Vegetation [VOCs]	TBD / TBD
L-CMB-04[c]	Emission Reductions from Emergency Standby Engines (Permitted) [NOx, VOCs]	0.0 / 0.1
	Total Stationary Source VOC Reductions	**1.1 / 1.2**
South Coast AQMD Stationary Source Other Measures:		
MCS-01	Application of All Feasible Measures [All Pollutants]	TBD / TBD
MCS-02	Wildfire Prevention [NOx, PM]	N/A / N/A
FLX-01	Improved Education and Public Outreach [All Pollutants]	N/A / N/A

a N/A are reductions that cannot be quantified due to the nature of the measure (e.g., outreach) or if the measure is designed to ensure reductions that have been assumed to occur will in fact occur.

b TBD are reductions to be determined once the measure is further evaluated, the technical assessment is complete, and inventories and cost-effective control approaches are identified, and are not relied upon for attainment demonstration purposes.

c This is a NOx control measure with co-benefits of VOC reductions.

1. South Coast AQMD Stationary Source NOx Measures

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a. Large Combustion Source Measures

In the large combustion sources category, there are 10 proposed NOx control measures:

- L-CMB-01: NOx Reductions for RECLAIM Facilities

- L-CMB-02: Reductions from Boilers and Process Heaters (Permitted)
- L-CMB-03: NOx Emission Reductions from Permitted Non-Emergency Internal Combustion Engines
- L-CMB-04: Emission Reductions from Emergency Standby Engines (Permitted)
- L-CMB-05: NOx Emission Reductions from Large Turbines
- L-CMB-06: NOx Emission Reductions from Electricity Generating Facilities
- L-CMB-07: Emission Reductions from Petroleum Refineries
- L-CMB-08: NOx Emission Reductions from Combustion Equipment at Landfills and Publicly Owned Treatment Works
- L-CMB-09: NOx Reductions from Incinerators
- L-CMB-10: NOx Reductions from Miscellaneous Permitted Equipment

L-CMB-01: NOX REDUCTIONS FOR RECLAIM FACILITIES: This control measure reduces NOx emissions by transitioning NOx RECLAIM facilities to a command-and-control regulatory structure requiring BARCT level controls. Source categories covered by this control measure include metal melting and heating furnaces, food ovens, and nitric acid tanks. The following rules would implement this control measure: Proposed Rule 1147.2 – NOx Reductions from Metal Melting and Heating Furnaces (PR 1147.2); Proposed Amended Rule 1153.1 – Emissions of Oxides of Nitrogen from Commercial Food Ovens (PAR 1153.1); and Proposed Rule 1159.1 – Control of NOx Emissions from Nitric Acid Tanks (PR 1159.1). Staff is proposing to evaluate a variety of different NOx control technologies depending on the type of NOx source. **The control technology evaluation processes and subsequent rulemakings will include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.**

L-CMB-02: REDUCTIONS FROM BOILERS AND PROCESS HEATERS (PERMITTED): This control measure reduces NOx emissions by replacing or retrofitting boilers and process heaters used in industrial, institutional, and commercial operations with zero and low NOx emission technologies. It would apply to units with a rated heat input greater than or equal to 2 million BTU per hour. Boilers and process heaters used in industrial, institutional, and commercial operations with a rated heat input greater than or equal to 2 million BTU per hour are currently regulated under Rules 1146 and 1146.1. This control measure will establish rules to set standards for new equipment, replacements, or retrofits of boilers and process heaters. **Any rulemaking will consider other rules associated with the transitioning of NOx RECLAIM facilities to a command-and-control regulatory structure, include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.**

L-CMB-03: NOX EMISSION REDUCTIONS FROM PERMITTED NON-EMERGENCY INTERNAL COMBUSTION ENGINES: This control measure targets emission reductions from permitted non-emergency internal combustion engines rated over 50 bhp regulated by Rule 1110.2 – Emissions from Gaseous- and Liquid-Fueled Engines. It proposes to transition, older, higher-emitting engines in the RECLAIM program to newer technology that can meet the NOx emission limits set forth in Rule 1110.2. Low NOx and zero emission technologies may be available in the future and will be evaluated to determine feasibility of implementation. **Any rulemaking will consider other rules associated with the transitioning of NOx**

RECLAIM facilities to a command-and-control regulatory structure, include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.

L-CMB-04: EMISSION REDUCTIONS FROM EMERGENCY STANDBY ENGINES (PERMITTED): This control measure seeks reductions of NOx emissions from emergency standby engines rated over 50 brake horsepower. Over 12,000 internal combustion engines are permitted for emergency standby power in the South Coast AQMD, however due to the essential nature, limited operations of these engines, and high replacement costs, multiple approaches are proposed to reduce emissions from this source category. The approaches involve an education and outreach program to encourage the transition to zero-emission technologies. Regulatory strategies include replacing older, higher emitting engines with cleaner engines or with alternative technologies, requiring the use of lower emission fuels, and a future prohibition of the use of Internal Combustion Engines for emergency backup power. As alternative technologies mature and new technologies emerge, the South Coast AQMD will undertake rulemaking to maximize emission reductions utilizing zero emission equipment where cost-effective and feasible and low NOx emission equipment in all other applications. Any rulemaking will consider other rules associated with the transitioning of NOx RECLAIM facilities to a command-and-control regulatory structure, include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.

L-CMB-05: NOX EMISSION REDUCTIONS FROM LARGE TURBINES: This control measure aims to reduce NOx from turbines in the South Coast AQMD subject to Rule 1134 – Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Rule 1134). Fuel cells and electrification are ways to shift away from combustion sources generating NOx emissions wherever feasible. As older higher emitting turbines reach the end of their equipment life it is expected that some facilities will opt to replace turbines with fuel cells or electrify facility operations. Any rulemaking will consider other rules associated with the transitioning of NOx RECLAIM facilities to a command-and-control regulatory structure, include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.

L-CMB-06: NOX EMISSION REDUCTIONS FROM ELECTRICITY GENERATING FACILITIES: This control measure reduces NOx emissions from electric generating units regulated by Rule 1135 – Emissions of Oxides of Nitrogen from Electricity Generating Facilities (Rule 1135). This measure proposes to develop a rule to implement low NOx and zero emission technologies at electricity generating facilities. The target of this approach is to replace boiler units with lower-emitting turbines, implement zero emission technologies such as fuel cells or electrification for 10 percent of gas-fired sources and other lower NOx emission technologies for the rest of gas-fired sources, and require stricter emission requirements from diesel internal combustion engines.

L-CMB-07: EMISSION REDUCTIONS FROM PETROLEUM REFINERIES: The goal of this measure is to assess and identify potential actions to further reduce NOx emissions by 20 percent for large refinery heaters and boilers with a maximum rated heat input of 40 MMBtu/hour. This would be accomplished by developing a rule requiring a lower NOx concentration limit of 2 ppm. South Coast AQMD staff identified three potential technological

approaches to further reduce emissions for the large heaters and boilers category. The three approaches include next-generation ultra-low NOx burners, advanced SCR, and transition to zero emission technology. **Any rulemaking will consider other rules associated with the transitioning of NOx RECLAIM facilities to a command-and-control regulatory structure, include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.**

L-CMB-08: NOX EMISSION REDUCTIONS FROM COMBUSTION EQUIPMENT AT LANDFILLS AND PUBLICLY OWNED TREATMENT WORKS: This control measure aims to reduce NOx emissions through a regulatory approach. The source categories for this control measure are biogas fueled combustion equipment – specifically boilers, turbines, and engines – regulated by Rule 1150.3 – Emissions of Oxides of Nitrogen from Combustion Equipment at Landfills (Rule 1150.3) and Rule 1179.1 – Emission Reductions from Combustion Equipment at Publicly Owned Treatment Works Facilities (Rule 1179.1).

L-CMB-09: NOX REDUCTIONS FROM INCINERATORS: This control measure seeks emission reductions of NOx by replacing or retrofitting incinerators and other combustion equipment associated with incinerators with zero and low NOx emission technologies. Incinerators are used to burn waste material at high temperatures until reduced to ash. This control measure will achieve reductions by developing a rule, and implementation of low NOx burner systems or ultra-low NOx burner systems. **Any rulemaking will consider other rules associated with the transitioning of NOx RECLAIM facilities to a command-and-control regulatory structure, include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.**

L-CMB-10: NOX REDUCTIONS FROM MISCELLANEOUS PERMITTED EQUIPMENT: The goal of this measure is to assess and identify potential actions to further reduce NOx emissions associated with miscellaneous permitted equipment located in the South Coast AQMD jurisdiction. South Coast AQMD staff will convene a stakeholder working group to discuss and identify actions or approaches to further reduce NOx emissions from these sources. Miscellaneous permitted equipment is regulated under Rule 1147 – NOx Reductions from Miscellaneous Sources with NOx emission limits depending on equipment category. **Any rulemaking will consider other rules associated with the transitioning of NOx RECLAIM facilities to a command-and-control regulatory structure, include incremental cost-effectiveness scenarios and methodology, identify industry-specific affordability issues, and provide alternative compliance mechanisms.**

FLX-03: STATIONARY SOURCE NOx INCENTIVES: This control measure seeks to provide incentive funding to facilitate the adoption of clean, zero or low NOx emission technologies from stationary sources. Facilities would be able to qualify for incentive funding if they use equipment or accept permit conditions which result in cost-effective emission reductions that are beyond existing requirements. The program would establish procedures for quantifying emission benefits from clean technology implementation and develop cost-effectiveness thresholds for funding eligibility. Mechanisms will be explored to incentivize businesses to choose the cleanest technologies as they replace equipment and upgrade facilities, and to provide incentives to encourage businesses to move into these technologies sooner. Potential incentive concepts include incentive funding, permitting and fee incentives

and enhancements, New Source Review (NSR) incentives and enhancements, branding incentives, and recordkeeping and reporting incentives.