



California Council for Environmental and Economic Balance

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April 24, 2018

Susan Nakamura
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
Submitted electronically to snakamura@aqmd.gov

RE: RECLAIM Transition to Command-and-Control Regulatory Structure

Dear Susan,

We submit the following comments on behalf of the California Council for Environmental and Economic Balance (CCEEB) on the current progress of the Regional Clean Air Incentives Market (RECLAIM) sunset. CCEEB is a nonpartisan, nonprofit coalition of business, labor, and public leaders that advances strategies for a healthy environment and sound economy. CCEEB represents many facilities that operate in the South Coast Air Quality Management (District) and that are subject to the requirements of the RECLAIM program's transition to a command-and-control regulatory structure.

First, we would like to acknowledge District staff and their work on the RECLAIM sunset. CCEEB is an active stakeholder in the RECLAIM Sunset Working Group and appreciates the publishing of the RECLAIM Transition Plan.¹ The document is helpful in that it summarizes staff's current thinking on many of the important issues and challenges related to the sunset of the RECLAIM program.

In this comment letter, CCEEB will be providing general comments on policy questions and issues of the RECLAIM transition. We are not submitting specific comments on language in the Transition Plan. Furthermore, we also encourage staff to provide the Transition Plan to board members, so that they may better understand the complexities and challenges facing the RECLAIM sunset.

Our primary, high-level comments are:

- **Continue to provide regulatory certainty to facilities during the RECLAIM transition** – It is important that staff continue to provide regulatory certainty to facilities on how and when they will transition from the RECLAIM program to a command and control regulatory structure.

¹ SCAQMD. "RECLAIM Transition Plan Version 1.0." March 2018.

- **The inclusion of cost-effectiveness and incremental cost-effectiveness for BARCT determinations is critical** – The statutory requirements of cost-effectiveness and incremental cost-effectiveness, among other requirements, must be met prior to adopting rules or regulations that include provisions for Best Available Retrofit Control Technology (BARCT). Additionally, BARCT must be commercially available and achieved in practice and, by definition, not technology forcing.
- **NSR Concerns** – We appreciate the difficulty in converting RECLAIM Trading Credits (RTCs) to Emission Reduction Credits (ERCs) for NSR purposes but believe that any future program should make use of RTCs for emission offsets in some manner. CCEEB looks to continue to engage staff in the RECLAIM transition to discuss and address NSR concerns.
- **MRR requirements should be amended to provide flexibility in meeting command and control rules post-RECLAIM** – The Monitoring, Reporting, and Recordkeeping (MRR) requirements should be amended post-RECLAIM to provide flexibility to facilities in meeting specific command and control regulatory requirements.
- **The permitting process during the RECLAIM transition should be as efficient as possible, with minimal disruption and constraints on permit costs** – To ensure minimal economic disruption in the air basin, keeping the facility structure of permits post-RECLAIM will support an efficient transition of facilities and support efforts to constrain permit costs.

What follows is a more detailed discussion of each of these points.

Provide Certainty During the Transition Process

The release of the RECLAIM Transition Plan is a helpful step forward in the District's efforts to transition the RECLAIM program to a command and control regulatory structure requiring BARCT level controls as soon as practicable.² The complexity of the RECLAIM transition – which includes 268 NOx RECLAIM facilities and over 2,500 individual pieces of equipment – is underscored by the fact that this is first transition, to CCEEB's knowledge, of a market-based regulatory program back to a command and control structure.³ The owner and operators of the 268 facilities and 2,500 sources need to be provided with certainty on how and when they will transition during the RECLAIM sunset process.

For these facilities and sources, the RECLAIM transition will impact New Source Review (NSR), permitting, rule development through new rules and amendments to existing rules, monitoring, reporting, and recordkeeping requirements, and other district activities. Regulatory certainty is critical during this process. Economic activity in the air

² SCAQMD. 2016 Air Quality Management Plan. March 3, 2017. CMB-05

³ SCAQMD. RECLAIM Staff Report to Board, Agenda No. 26. May 5, 2017.

basin may be negatively impacted if facilities are not able to adequately anticipate and plan for regulatory requirements.

CCEEB seeks to ensure that facilities in the RECLAIM transition are provided with the needed information and certainty during the transition process. This is also important for non-RECLAIM facilities, as they analyze if new or amended rules adopted as part of the RECLAIM transition will impact their facilities.

BARCT Determinations

As mandated by California Health and Safety Code Section 40920.6, any rule or regulation for BARCT must satisfy specific requirements, as defined in the section. These requirements include cost-effectiveness and incremental cost-effectiveness of proposed control strategies. Findings must then be presented at a public hearing where the findings of these requirements are considered at part of the adoption of the proposed control option.

CCEEB is pleased to see that the requirements of cost-effectiveness and incremental cost-effectiveness are acknowledged by the District.⁴ The guiding principles for establishing BARCT can be used by facilities to begin to assess potential control options during the transition process. In response that staff will conduct a BARCT review if, among other things, 2015 RECLAIM amendment NOx concentration levels need to be reassessed, CCEEB believes staff should conduct a BARCT review across all sources as the baseline.⁵ Such a review will likely also result in the need to establish new classes and categories of sources.

As statutorily required, identification of BARCT technologies must be done through a transparent public process in which stakeholders have an opportunity to review and comment on findings and conclusions prior to a hearing. BARCT cannot be technology forcing. It must be commercially available and achieved in practice. The identification of technology cannot be based merely on control technology demonstration projects, conferences, or vendor contact with staff. BARCT determinations must be made in a public hearing, meeting the statutory requirements of the California Health and Safety Code Section 40920.6.

NSR Concerns

CCEEB understands the difficulty in converting RTCs to ERCs for NSR purposes but believes that any future program should make use of RTCs for emission offsets in some manner. We look forward to continuing to engage staff in the RECLAIM transition process to address NSR concerns and ensure an equitable and efficient program for all affected facilities.

⁴ SCAQMD. RECLAIM Transition Plan. March 2018. p. 10.

⁵ Ibid. p. 11.

Flexibility in MRR Requirements

As directed by the SCAQMD Board, the RECLAIM program is to transition to a traditional command and control program. As part of this transition, MRR requirements should be amended to provide facilities flexibility in meeting command and control requirements. For example, we do not see the justification for conducting daily reporting post-RECLAIM.

CCEEB has additional policy questions regarding the development of MRR requirements post-RECLAIM. These include, if MRR requirements are not aligned post-RECLAIM, will non-RECLAIM facilities be required to follow RECLAIM MRR requirements? Or, will two systems of reporting – MRR and current command and control reporting – exist if RECLAIM MRR requirements are not aligned post-RECLAIM? Facilities are concerned that they may still need to conduct daily reporting post-RECLAIM. Finally, how will differences between RECLAIM reporting cycles be reconciled? Addressing these policy questions will help provide greater regulatory certainty to facilities, both RECLAIM and non-RECLAIM, during the transition.

Permitting During RECLAIM Sunset

District staff's intent to make permitting during the RECLAIM transition as efficient as possible is well placed. We share District concerns regarding potential impacts to the permitting process in the transition of facilities to a post-RECLAIM regulatory structure.

The District's goal of minimal disruption and minimizing financial costs to owners or operators of facilities as they transition to command and control ensures that economic growth can continue in the region. Additionally, CCEEB is supportive of an efficient transition process by keeping the structure of the facility permits for current RECLAIM facilities.

CCEEB has additional policy questions regarding permitting during the RECLAIM sunset. Specifically, what will have to be permitted during the transition and how will these determinations be made? Additionally, will facilities need to offset emissions from this equipment during this process? If yes, can RTCs be used? Are adequate resources and staffing available for potential increases in permitting volume due to RECLAIM? How will staff work to keep fees in check?⁶ By addressing these questions, staff can both plan for the RECLAIM transition process and provide stakeholders with information needed to plan for potentially complex permitting projects.

We appreciate the opportunity to provide these comments on the RECLAIM sunset and look forward to continuing to engage staff in the working group, rulemaking, and broader public process. In the meantime, should you have any questions or wish to discuss our comments further, please contact me (billq@cceeb.org or 415-512-7890

⁶ The April 4, 2018 Draft Rule Language for Regulation III – Fees proposes a "RECLAIM permit reissuance fee" in paragraph 301(l)(16). CCEEB submitted comments on this rule making on April 24, 2018, asking staff to minimize cost impacts by capping T&M charges and to reduce the disparity between the second and third tier of initial flat fee of the RECLAIM permit reissuance. CCEEB supports the District's stated approach of finding the least resource intensive pathway and seeking to minimize cost impacts during the RECLAIM transition process.

ext. 115), Janet Whittick (janetw@cceeb.org or ext. 111), or Devin Richards (devinr@cceeb.org or ext. 110).

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Quinn". The signature is fluid and cursive, with the first name "Bill" and last name "Quinn" clearly distinguishable.

Bill Quinn
CCEEB Vice President
South Coast Air Project Manager

cc: Philip Fine, SCAQMD
Jerry Secundy, CCEEB
Janet Whittick, CCEEB
Devin Richards, CCEEB
CCEEB South Coast Air Project Members