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February 25, 2020

Governing Board
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Proposed NOx RECLAIM Program Transition

Dear Governing Board Member:

I am writing on behalf of the Regulatory Flexibility Group (“RFG”) and the Western States Petroleum Association (“WSPA”) to follow up on testimony that I provided at the February 7, 2020 Governing Board hearing related to the proposed transition from the NOx RECLAIM program to a command and control regulatory regime (“NOx RECLAIM Transition”) (Agenda Item No. 23).

WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas and other energy supplies in five western states including California. WSPA has been an active participant in air quality planning issues for over 30 years. WSPA-member companies operate petroleum refineries in the South Coast Air Basin that will be impacted by the NOx RECLAIM Transition.

The RFG is an industry coalition comprised of companies in the refining, utility and aerospace sectors that operate facilities currently within the NOx RECLAIM program that will be impacted by the NOx RECLAIM Transition. The RFG participated in the development of the RECLAIM program from its inception and has been an active participant in all major amendments to the program.

Thank you for your attention to the testimony provided on February 7, 2020 and for the insightful follow-up questions to staff. We also appreciate staff’s candid responses regarding the complexity of the transition and the timing associated with its implementation. Following is some supplemental information related to the questions asked by Board Members and staff’s responses.

Continued Success Of The NOx RECLAIM Program

All parties seemed to acknowledge that significant emission reductions have been achieved over the life of the NOx RECLAIM program; however, the declining rate of emission reductions in recent years and the fact that not all equipment subject to the program is at BARCT continue to be offered as justifications for the NOx RECLAIM Transition.

The declining rate of emission reductions is inevitable. As stated by staff at the hearing, additional reductions are increasingly difficult to achieve. That is just as true in a command and control regulatory regime as it is in a market based regime – perhaps even more so since market based programs offer greater flexibility to achieve additional reductions. Thus, the declining rate of reductions is not evidence of diminishing effectiveness of the program – it is a reflection of the significant reductions that have already been achieved.

It is also inevitable in a market based program that not all equipment will be at BARCT levels or be equipped with control equipment – the fundamental premise of a market based system is to allow for over-control on equipment where that can be accomplished practically and cost-effectively, and forego controls on equipment where that is not the case, all while achieving equivalent or greater emission reductions in the aggregate. The NOx allocations depicted in slide 5 of staff's presentation were established by Governing Board rulemaking to ensure that aggregate actual emissions from RECLAIM facilities would be at or below the levels that would be achieved if all equipment was at BARCT. The measure of success of the program is whether or not actual emissions are below the aggregate BARCT allocations, which they clearly are. As long as actual emissions remain below BARCT allocations, the program is achieving the same level of emission reductions and health protection that would be achieved in a command and control program where each individual piece of equipment was equipped with emission control equipment.

Timing Of The NOx RECLAIM Transition

The timing of the NOx RECLAIM Transition must be driven by the amount of time reasonably necessary for all parties working diligently to complete rulemaking and obtain USEPA approval of the new program, and to engineer, permit, procure and construct new emission control equipment. Given the complexity and uncertainty associated with the NOx RECLAIM Transition, the timing cannot be dictated by arbitrary deadlines. It is important to remember that AB617, discussed by staff at slide 8 of its presentation, did not amend the Health & Safety Code provisions allowing BARCT to be implemented through market based programs such as NOx RECLAIM.

As stated above, the NOx allocations depicted in slide 5 of staff's presentation were established by Governing Board rulemaking to ensure that aggregate actual emissions from RECLAIM facilities would be at or below BARCT levels. Facilities are already in the process of implementing emissions control projects to comply with the Board's 2015 shave, which began implementation in 2016. Individual facility caps will remain in place until the NOx RECLAIM

Transition is complete. As a result, in the aggregate, facilities are, and will continue to be, at or below BARCT regardless of when the NOx RECLAIM Transition occurs. Thus, there is no need for the NOx RECLAIM Transition to be driven by arbitrary deadlines.

The Cost Of The NOx RECLAIM Transition

In response to questions regarding the cost of the NOx RECLAIM Transition, staff focused on the cost-effectiveness of the emission controls necessary to achieve the proposed BARCT standards. Setting aside concerns that we have raised elsewhere regarding the cost-effectiveness methodology being utilized by staff, and the fact that some of the BARCT standards under consideration exceed the \$50,000 per ton cost-effectiveness threshold utilizing staff's methodology, focusing on cost-effectiveness alone masks the actual cost of implementing the NOx RECLAIM Transition.

In 2015, the Governing Board approved amendments to the NOx RECLAIM program intended to achieve total BARCT-equivalent emission reductions of 8.77 tons per day (the "Board's 2015 shave" referred to in slide 5 of staff's presentation). According to staff's analysis at the time, the overall average cost-effectiveness of the emission reductions ranged from \$9,000 to \$14,000 per ton of NOx reduced.¹ The total cost of implementing the proposed amendments was estimated to range from \$728 million to \$1.1 billion.² During the hearing on February 7, 2020, staff indicated that the cost-effectiveness of the measures currently under consideration ranges from \$30,000 to \$50,000 per ton – more than three times higher than the cost-effectiveness range for the 2015 amendments, and we believe that staff has underestimated the actual cost-effectiveness of many of the proposed controls. Clearly, the costs associated with implementing the proposed NOx RECLAIM Transition will reach well into the billions of dollars.

We hope that this additional information is helpful. While both WSPA and the RFG members would prefer to remain operating within the NOx RECLAIM program, which was effective at achieving BARCT-equivalent emission reductions at costs significantly below those likely to be experienced under prescriptive command-and-control rules, we are working diligently with staff and other stakeholders to address the complex issues associated with the NOx RECLAIM Transition. Our member companies also stand ready to make substantial investments in additional emission controls. Our requests are that proposed BARCT standards be cost-effective as required by law, and that the ability to operate our facilities in compliance with applicable requirements not be jeopardized by imposition of unrealistic requirements and deadlines.

¹ Governing Board Summary, Agenda Item No. 30, December 4, 2015, page 6.

² "Id".

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If you have any questions regarding the issues discussed above, or any other issues associated with the NOx RECLAIM Transition, please do not hesitate to contact me at michael.carroll@lw.com.

Best regards,



Michael J. Carroll
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cc: RFG Member Companies
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