

## **Proposed Agenda for Oct. 22, 2019 Meeting at EPA offices in SF**

**Attendance: EPA staff, South Coast staff, and Mike Carroll, representing the Regulatory Flexibility Group (RFG),**

### **A. New BARCT Standards**

#### 1. Multi-Pollutant BARCT Standards

##### a. Balancing NOx and Ammonia Limits

SCAQMD staff is proposing NOx BARCT standards that are at or below the lowest levels currently being achieved by sources in the relevant class or category. The most common control technology for achieving these standards is selective catalytic reduction (“SCR”), which involves ammonia injection and can result in particulate emissions as a result of ammonia slip. The more stringent the NOx standard is, the more ammonia injection is required and the more difficult it becomes to limit ammonia slip.

To avoid impacts associated with increases in particulate emissions, staff is proposing stringent limits on ammonia slip. However, in its evaluation of what is currently being achieved for NOx, staff often fails to acknowledge that the lowest emissions of NOx are being achieved with units that have high or no limits on ammonia slip. This approach ignores the inherent technological trade-off between these two pollutants and results in combinations of standards that may not be achievable, and certainly not at the costs identified by staff.

Industry’s position is that NOx BARCT standards that are based on what has been achieved on other sources must take into consideration the ammonia limits, or lack thereof, applicable to the other sources. If staff determines that it is critical to limit particulate emissions resulting from ammonia slip, then it might be appropriate to set the NOx standard at a level that is higher than what might otherwise be achievable if ammonia slip was not an issue. We believe that the definition of BARCT allows this co-pollutant trade-off to be taken into consideration.

##### b. Triggering NSR for Co-Pollutants

Installation of SCR to control NOx emissions can result in increases in other pollutants, including particulate matter (“PM”) as a result of ammonia slip. In some cases, these increases can exceed thresholds that trigger new source review requirements, including emission offsets, modeling, and installation of best available control technology (“BACT”).

SCAQMD Rule 1304(c)(4) provides an exemption from the offset requirements in cases where “[t]he source is installed or modified solely to comply with District, state, or federal

air pollution control laws, rules, regulations or orders, as approved by the Executive Officer or designee, and provided there is no increase in maximum rating.” However, there is no equivalent exemption from the modeling and BACT requirements. In some cases, the costs associated with meeting the BACT standard for PM can greatly exceed the cost of achieving the NOx BARCT standard that is causing the increase in PM emissions.

Industry’s position is that there must be relief from NSR requirements, including BACT, that would otherwise be triggered by increased emissions associated with installation of NOx emission controls to achieve revised BARCT standards. This issue must be addressed with input and concurrence from SCAQMD permitting staff to avoid surprises at the time that applications are submitted to implement the revised BARCT standards.

Finally, unless there is clear relief from the requirement to meet NSR for co-pollutants, the costs associated with meeting such requirements must be factored into the cost-effectiveness analysis for the proposed NOx BARCT standard.

## 2. Availability of Alternative Emission Control Plans

Updated BARCT rules currently under development rely primarily on concentration-based limits on individual pieces of equipment. Since early in the RECLAIM transition process, industry has advocated for alternatives to equipment-by-equipment BARCT standards. The Health & Safety Section 40920.6(f) provides for this flexibility and states that districts “...shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar amount per ton reduced...” Following are some key constructs that industry recommends for development of alternative emission compliance plans (AECPs).

- Facilities under the same ownership should be eligible to be considered as one entity for compliance purposes.
- The rules should provide flexibility for facilities to propose the best form of AECP for their specific operations, such as mass-based caps covering all facilities under the same ownership, for example.
- AECPs should include emission reduction targets based on the BARCT concentration requirements and timeline promulgated in the underlying landing rule.

## **B. New Source Review (NSR) and Anti-Backsliding Concerns**

### 3. Viability of Retaining RECLAIM NSR

Transitioning RECLAIM facilities to a newly developed NSR program, or attempting to shoehorn them into the existing Regulation XIII NSR program, presents a number of challenges. The regulatory and statutory drivers for the transition focus on revising the BARCT component of the RECLAIM program and do not mandate replacement of the NSR program. Thus, one possible solution is to impose updated command and control rules to achieve BARCT compliance, thereby eliminating the cap-and-trade BARCT component of RECLAIM, but to retain the RECLAIM NSR program. This would include maintaining the existing NSR applicability trigger (discussed further below), and existing NSR offset provisions utilizing RTCs.

Retaining the existing RECLAIM NSR program avoids a number of issues that have arisen in recent discussions related to amending Regulation XIII to accommodate former RECLAIM facilities. Furthermore, SCAQMD staff and US EPA staff have cautioned that the replacement NSR program must be at least as stringent as the current RECLAIM NSR program to avoid running afoul of federal and state requirements prohibiting “back-sliding.” Retaining the existing RECLAIM NSR program would eliminate the need to conduct any analysis or make any determinations regarding whether or not whatever NSR program might replace the existing program was at least as stringent as the existing program.

#### 4. Requirement to Demonstrate that Emissions Remain Below Final Cap

US EPA has suggested that in order to avoid backsliding under Section 110(l), a demonstration must be made on an annual basis in perpetuity that total aggregate emissions from former RECLAIM facilities are no greater than the aggregate supply of RTCs at the conclusion of the program. US EPA has identified elimination of the cap as one of the impediments to retaining RECLAIM NSR post transition. If it is necessary to retain RECLAIM NSR, it is possible that industry would support an annual demonstration on the part of the SCAQMD that emissions remained below the cap. In the unlikely event that regional emissions increased above the cap, the exceedance could be offset with credits from the SCAQMD internal bank, or through some other form of equivalency demonstration.

#### 5. NSR Holding Requirement

SCAQMD Rule 2005(b)(2)(A) requires that, as a condition of obtaining a pre-construction permit, any facility initially permitted after the inception of the RECLAIM program hold sufficient RTCs to offset the total facility emissions for the first year of operation at a 1-to-1 ratio. In addition, SCAQMD Rule 2005(f)(1) requires that any such facility, at the commencement of each compliance year, hold the same quantity of RTCs. This latter requirement is commonly referred to as the “NSR Holding Requirement.” It has been suggested that the NSR Holding Requirement might survive the termination of the RECLAIM program, and that either affected facilities would have to demonstrate compliance with the requirement on an individual basis, or that the SCAQMD would have to make a demonstration that sufficient RTCs had been “set aside” to satisfy the NSR Holding Requirement on an aggregate basis. Industry might support retaining the NSR Holding Requirement if it was necessary to retain the RECLAIM NSR program following transition. However, the NSR Holding Requirement is meaningless outside of the context of the RECLAIM NSR program, and the requirement should be eliminated if the RECLAIM NSR program is not retained.

#### 6. NSR Applicability Trigger

The current RECLAIM NSR trigger for modifications is based on an hourly PTE-to-PTE test. Similarly, SCAQMD Regulation XIII, NSR for non-RECLAIM pollutants, also employs a PTE-to-PTE test for modifications, although PTE is measured on a daily basis, as opposed to an hourly basis (SCAQMD Rule 1306(d)(2)).

US EPA has commented that any revised NSR rule applicable to former RECLAIM facilities that are major sources must comply with the December 2002 promulgation of EPA’s revisions to

its NSR program, also known as “NSR Reform.” After NSR Reform, Federal NSR allows the use of either of two applicability triggers for modifications at major sources, neither of which is the PTE-to-PTE test utilized in both SCAQMD NSR programs.

Presumably, EPA approval of a modified Regulation XIII NSR program applicable to former RECLAIM facilities would be dependent upon use of one of the federally recognized applicability triggers. In other words, if the RECLAIM NSR program is not retained, the hourly PTE-to-PTE test may have to be replaced with one of the two tests described above. Furthermore, if Regulation XIII were to be amended to incorporate former RECLAIM facilities, the change to one of the federally recognized applicability thresholds would affect not only former RECLAIM facilities and pollutants, but all facilities and all pollutants.

SCAQMD staff has suggested that the federal Baseline Actual Emissions-to-Projected Actual Emissions test may be less stringent than the current PTE-to-PTE test because Projected Actual Emissions are typically lower than post-modification PTE. Thus, staff is concerned that use of Baseline Actual Emissions-to-Projected Actual Emissions test might run afoul of SB288, which provides that “[n]o air quality management district or air pollution control district may amend or revise its new source review rules or regulations to be less stringent than those that existed on December 30, 2002.” As a result, SCAQMD staff is recommending that any revised NSR program include the federal Actual Emissions-to-Potential to Emit test. This would result in many more modifications triggering NSR requirements.

Industry believes that SCAQMD staff’s SB288 concerns are misplaced because they are based only on the change to the post-modification parameter (i.e., post-modification PTE versus post-modification projected actuals), and ignore that the pre-modification parameter (i.e., pre-modification PTE versus pre-modification actuals) would also change. While it may be true that post-modification Projected Actual Emissions would typically be lower than post-modification PTE, it would also be the case that pre-modification actuals would typically be lower than pre-modification PTE. Thus, moving from a PTE-to-PTE test to an actuals-to-actuals test would not necessarily be less stringent, and could in fact be more stringent.

This issue becomes moot if the existing RECLAIM NSR program is retained, which is one of the reasons that industry recommends doing so.

## 7. Methodology for Calculating Required Offsets

The current RECLAIM NSR offset requirement is contained in Rule 2005(c)(2). As discussed above an “emission increase” is determined by comparing pre-modification hourly PTE to post-modification hourly PTE. If the current RECLAIM NSR program was retained, then the methodology for determining offset requirements associated with a modification would remain as it is. However, according to SCAQMD staff, US EPA has commented that offsetting requirements in any alternative NSR program for major sources should be based on the difference between pre-modification Actual Emissions and post-modification PTE. Moving to such a test would significantly increase the offset obligation associated with most modifications, and as discussed further below, existing supplies of offsets are already severely restricted. This is another reason that industry supports retaining the existing RECLAIM NSR program.

## 8. Use of SCAQMD Internal Bank to Satisfy NSR Offsets

SCAQMD staff has proposed allowing former RECLAIM facilities to pay a fee to access offsets in the SCAQMD's internal emission offset bank which is utilized to cover emissions from facilities that are exempt from offset requirements under SCAQMD rules, thereby demonstrating equivalency with federal offset requirements. US EPA has expressed some reservations regarding the integrity of the offsets in the internal bank (although it has repeatedly approved Regulation XIII, including the offset exemptions that are covered by the internal bank). While this issue becomes moot if the RECLAIM NSR program is retained, industry supports providing former RECLAIM facilities access to the internal bank at a reasonable fee if the RECLAIM NSR program is replaced by a program in which RTCs are no longer available as NSR offsets.