

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 – NO_x 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 – NO_x 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 NO_x 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 NOx 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 NOx emissions in any compliance year are less than 10 percent of the maximum annual NOx 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 NOx 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