



Air Resources Board



Matthew Rodriguez
Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

January 7, 2016

Dr. Barry Wallerstein
Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Dear Dr. Wallerstein:

I am writing to express my significant concern over the South Coast Air Quality Management District (District) Board vote on December 4, 2015, amending the District's Regional Clean Air Incentives Market (RECLAIM) program. Although these amendments will reduce nitrogen oxide (NOx) emissions by 12 tons per day, this is a smaller reduction at a slower pace than the amendments proposed by District staff, at a time when the South Coast needs every ton of achievable reductions to attain healthy air. ARB's preliminary staff assessment is that the amendments would result in an air quality management plan (AQMP) we cannot approve. I provide additional detail below as well as recommend next steps for addressing our concerns.

This action will negatively affect the health of people living in the region because it falls short of what is needed to attain federal air quality standards and does not fulfill the District's statutory obligation to develop an AQMP that achieves the State air quality standards by the earliest practicable date. Furthermore, based on the District staff's own analysis, the amendments do not appear to meet the minimum emissions control requirements in California law for air pollution sources in RECLAIM. Should further analysis substantiate these points, ARB would be unable to approve these latest amendments and transmit them to the U.S. Environmental Protection Agency (U.S. EPA) for inclusion in the state implementation plan (SIP).

As you know, emissions of NOx contribute to atmospheric fine particulate (PM_{2.5}) matter and ozone. Meeting federal air quality standards for ozone and PM_{2.5} is critically important for protecting the health of residents in the South Coast Air Basin. U.S. EPA has classified the South Coast Air Basin as an extreme ozone nonattainment area. The Basin also recently missed the 2015 deadline for meeting the 35 ug/m³ PM_{2.5} standard. Therefore, it is incumbent on our two agencies to achieve all feasible emissions

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California Environmental Protection Agency

reductions both from mobile sources under ARB's direct regulatory authority and from stationary sources under the District's authority. Aggressive action by U.S. EPA will also be needed, as ARB and the District have vigorously asserted.

ARB staff has been working closely with District staff to develop a mobile-source strategy for the region that will provide the large reductions necessary from the mobile sector. Despite very stringent standards developed by ARB in which vehicles and equipment are over 90 percent cleaner than a few decades ago, more reductions are still needed. Last October, ARB staff released a draft mobile source strategy to achieve an additional 80 percent reduction of NOx emissions from today's levels by 2031. We continue to work with District staff to refine that strategy and to identify the funding needed for implementation. While it is important that our combined staffs continue this focus, meeting federal air quality standards is a shared responsibility and *cannot rely on the mobile source sector alone*. Attaining federal air quality standards requires a similar scale of reductions from stationary sources.

At the District Board hearing, District staff proposed a 14 ton/day reduction in NOx emissions from the RECLAIM program. That 14 ton/day reduction is an essential component of the District stationary source strategy for meeting air quality standards and accounts for a substantial portion of the reductions needed from the stationary source sector. ARB staff testified at the hearing that the RECLAIM amendments as proposed ensured timely implementation and represented a key element of the corresponding stationary source strategy consistent with the emission reductions needed for the 2023 attainment compliance year. Reducing the level of reductions to 12 tons/day for RECLAIM sources increases the reductions necessary from other District stationary sources. In addition, the adopted implementation schedule does not provide for sufficient timely reductions and is in conflict with California's Health and Safety Code Sections 40910 and 40913¹ that require expeditious progress.

Furthermore, as an extreme nonattainment area for ozone under State law, Section 40920.5 requires the application of Best Available Retrofit Control Technology (BARCT) as the *minimum level* of control for stationary sources in the South Coast Air Basin. Section 40406 defines BARCT as "an emissions limitation that is based on the maximum degree of reduction achievable, taking into account environmental, energy, and economic impacts by each class or category of source." The District is authorized by statute to implement a market-based program in lieu of a traditional facility-by-facility BARCT rule as long as it meets the requirements set out in State law. Specifically, Section 39616 authorized the District to adopt the RECLAIM alternative market based mechanisms only if the program results in aggregate emission reductions that are equivalent to application of command and control programs, including BARCT, at

¹ All subsequent references are to California's Health & Safety Code unless otherwise noted.

individual facilities, and requires the District to find this to be the case, based on appropriate information. The District cannot implement its market-based mechanism unless ARB determines that it will in fact be equivalent to command and control programs under District authority for stationary sources (Section 39616.)

Under Sections 39616 and 40440.2, and District Rule 2015, the District must regularly review advances in control technologies to ensure that a BARCT-equivalent level of control continues in effect. District staff conducted a comprehensive review of current BARCT and the magnitude of further emission reductions necessary to meet these provisions. The staff report presented to the District Board in support of the proposed RECLAIM amendments identified, for example, a 2 parts per million by volume (ppmv) NO_x limit as BARCT for refinery fluid catalytic cracking units. Staff determined that this limit has been achieved in practice at an existing refinery with selective catalytic reduction. District staff also determined that multiple technologies are commercially available that can be used in conjunction to achieve the 2 ppmv NO_x level in a cost-effective manner. District staff also identified a 2 ppmv NO_x limit for refinery boilers and heaters rated at greater than 40 mmBtu/hr as BARCT because this limit has been achieved in practice by applying a number of technologies that are commercially available and cost-effective. These are only two examples of many, but they are particularly relevant in light of the Board's action to overrule its staff and instead follow the approach advocated by the Western States Petroleum Association (WSPA.)

District staff's review provided the technical foundation for its proposal for the 14 ton/day NO_x reduction necessary to achieve emissions reductions consistent with application of BARCT technology through the RECLAIM program. In response to WSPA and other industry comments that the proposed 14 ton/day NO_x reduction goes beyond BARCT. District staff notes:

SCAQMD have significant concerns that proposals with less than 14 tons per day would not meet the state law requirements for BARCT and command and control equivalency. With regards to the regulated community's proposal, staff's response has been that in order to achieve a command and control equivalency there must be 10.21 tpd remaining emissions in 2023. This equates to a shave of 14 tpd which is the amount needed to achieve BARCT. It does not go beyond BARCT.

RECLAIM is a key element of the District's AQMP. Section 40460 requires the AQMP to achieve and maintain State and federal standards in the air basin. Once the District formally submits its AQMP to ARB for approval, ARB must determine whether it meets all requirements of the State and federal Clean Air Acts (Section 40469, subd. (a)) before transmittal to U. S. EPA. In order to avoid "ping-ponging" that could lead to

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unnecessary delay and potential penalties for failure to submit an approvable SIP under federal deadlines, it has been a long-established practice for ARB and District staff to reach agreement on key regulatory elements, as well as underlying data and analysis, prior to a formal submittal by the District. The District Board action bypasses this process.

In summary, ARB staff has two serious concerns about the adequacy of the RECLAIM amendments. The first is that the 12 ton/day NO_x reduction falls short of what is needed given the overall emission reduction needs in the region to meet State and federal air quality standards. The second is that based on District staff's documentation in its staff report the amendments do not meet State law for air pollution sources in RECLAIM. I have directed ARB staff to perform its own assessment of the amendments to RECLAIM and their impact on the District's ability to meet its obligations under the law. If ARB's staff assessment concludes that the amendments to RECLAIM, together with the other elements of the District's plan, do not meet requirements of State and federal law, ARB is required to take steps under Sections 39002 and 40469 of the Health and Safety Code to resolve any deficiencies.

We understand that the District is expecting to release a draft AQMP by early February and is considering further changes to RECLAIM to address facilities that have shutdown permanently. I believe it could be productive for our respective Boards and staff to discuss both stationary and mobile source strategies necessary to put us on the right track for achieving the health-based air quality standards. Based on the excellent collaboration between our agencies over this past year, I am confident that a Board-to-Board discussion would be productive. Thus, I would like to discuss this concept with you further in an effort to map out a proposal for having such a meeting. If you concur with my suggestions, we can plan to discuss further over the next few days. Please contact me at (916) 712-0988 so that we can discuss the proposal and associated logistics in more detail.

Sincerely,



Richard W. Corey
Executive Officer

cc: See next page.

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