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July 10, 2020

Via Email at Michael.carroll@lw.com

Michael J. Carroll, Esq.
LATHAM & WATKINS LLP
650 Town Center Drive, Ste. 2000
Costa Mesa, CA 92626

Re: Your Letter of April 27, 2020 Regarding Proposed Rule 1109.1

Dear Mr. Carroll:

Thank you for your letter of April 27, 2020, to Mr. Michael Krause regarding Proposed Rule 1109.1. Many of the issues you raise have been addressed in our response to your letter dated April 21, 2020. We respond here to the issues not already addressed. Your contentions are as follows:

1. It is not appropriate to propose Best Available Retrofit Technology ("BARCT") standards based on "emerging technology" in the context of PR 1109.1

Your argument acknowledges that according to the California Supreme Court, BARCT may be technology-forcing. However, you assert that this principle is limited to cases where the BARCT standard could be implemented without physical modifications to the source and NSR permitting. We disagree.

You base this argument on the assertion that the Supreme Court recognized that BACT must be based on current technology. But this is because BACT is being implemented immediately, for "imminent new construction", whereas BARCT may be implemented at some future date, as the Supreme Court recognized. *American Coatings Ass'n. v. South Coast AQMD,* 54 Cal 4th 446, 467 (2012). In the case where BARCT will not be implemented until the future, and thus does not require imminent new construction, the argument that technology must be currently available does not apply. BARCT is "not limited to technology that already exists at the time a regulation is promulgated. BARCT also encompasses potential or developing technology that will enable compliance with emission limits by the effective date of the regulation." *American Coatings*, 54 C 4th 446, 469. If the BARCT technology turns out not to be feasible by the time it is required,

(and the NSR permit is to be issued) either the District will need to amend the rule or the facility will need to seek a variance, just as in the case of any other BARCT rule.

2. The District should comprehensively assess impacts if it intends to sunset the SOx RECLAIM program

The District believes that it is not necessary to sunset SOx RECLAIM to address the co-pollutant issue. Staff is still exploring options on how to address co-pollutant issues associated with installation of SCR when there is an increase in PM emissions associated with the sulfur in the refinery fuel gas. As discussed in the RECLAIM Working Group meeting in June, staff discussed various options for addressing PM emissions. If it is determined that increases in PM emissions from the installation of SCR requires BACT for the sulfur content in the refinery fuel gas, this is an NSR issue associated with the implementation of Proposed Rule 1109.1 where the costs will be addressed and incorporated in the cost-effectiveness analysis.

3. NOx limits alone do not constitute a proposed BARCT standard, and must be accompanied by other essential elements of the proposed standard, such as schedule, averaging times, ammonia slip, etc.

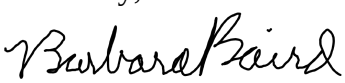
Staff intends to include these elements in any final BARCT proposal to be presented to the Board for adoption.

4. PR 1109.1 should address the availability of AECPs (alternative emission control plans)

Your letter asserts that under Health and Safety Code Section 40920.6(f), the District "shall allow alternative means of producing equivalent emission reductions at an equal or lesser dollar per ton reduced…" However, this option is available only for a "stationary source that has a demonstrated compliance cost exceeding that established dollar amount." Since this option is limited to "a stationary source" it does not appear to require the District to allow emissions trading among separate facilities under the same ownership, or even among separate sources in the same facility. The District's rules generally comply with this provision automatically because they do not specify a required control technology but rather set an emissions limit that can be met by any method that will achieve the limit. However, we do not believe the section you cite requires the District to authorize inter-source trading. Thus, we do not believe there is a legal mandate to allow AECPs (alternative emission control plans) of the type you describe. Nevertheless, staff will consider your suggestions as part of the rule development process.

Thank you for your interest and participation in this rule development effort. If you have any questions please feel free to contact Michael Krause at 909-396-2706, mkrause@aqmd.gov or Barbara Baird at 909-396-2303, bbaird@aqmd.gov.

Sincerely,



Barbara Baird
Chief Deputy Counsel