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File No. 018282-0000

October 28, 2020

Susan Nakamura
Assistant Deputy Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Proposal to Modify Regulation XIII New Source Review Applicability Trigger

Dear Susan:

On behalf of the Regulatory Flexibility Group (“RFG”) and Western States Petroleum Association (“WSPA”), I am submitting the following comments on the SCAQMD staff proposal presented at the August 13, 2020 Regulation XIII Working Group meeting to modify the new source review (“NSR”) applicability trigger in Regulation XIII to address federal requirements. Under the proposed approach, Regulation XIII would retain the existing PTE to PTE test as a “first tier” for evaluating whether or not a proposed modification triggers NSR. For those modifications that did not trigger NSR under the first tier test, a “second tier” consisting of the federal applicability tests would be applied.

Our comments relate to: 1) whether the federal requirements should be incorporated by reference or restated in Regulation XIII; and 2) making projected actual emissions a permit limit in cases where the past actual to projected future actual applicability test is utilized.

1. We recommend incorporating the federal requirements by reference.

During Working Group meetings, it was suggested that the federal requirements be restated in Regulation XIII rather than simply incorporated by reference. I believe this recommendation was based on a desire to have all of the requirements available in one place. We recommend against this approach because it introduces the risk of inadvertent and/or intentional differences between the federal requirements and what appears in Regulation XIII. Such differences could cause confusion and could bring into question the applicability of the substantial body of guidance and interpretive materials that have been created regarding implementation of the federal requirements. This substantive risk outweighs any convenience that might be achieved through restatement of the federal requirements.

2. We recommend against making projected actual emissions permit limits.

Consistent with our recommendation to simply incorporate the federal requirements without change by reference, we recommend against the proposal described on slide 40 of the August 13, 2020 Working Group meeting presentation to make projected actual emissions permit limits. The federal approach requires “reasonable possibility recordkeeping” to verify the projected actual emissions for a given project. This is triggered if the emission increase is greater than 50% of the significant emission rates. The recordkeeping requires detailed tracking of actual emissions, and in certain cases, reporting to the agency if emissions projections are off. Our understanding is that staff is proposing to incorporate these recordkeeping and reporting requirements along with the other elements of the federal applicability test. This approach is sufficient without the need for limits.

We appreciate your attention to this matter. If you have any questions, please do not hesitate to call me at (714) 755-8105 or email me at michael.carroll@lw.com.

Best regards,



Michael J. Carroll
of LATHAM & WATKINS LLP

cc: Regulatory Flexibility Group
Western States Petroleum Association
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