

July 16, 2021

Wayne Nastri
Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Dear Wayne:

I write to express the views of the California Air Resources Board (CARB) as to the use of emissions credits by a facility to meet best available retrofit control technology (BARCT) requirements, as modified by Assembly Bill (AB) 617 (Garcia, 2017). I understand that the South Coast Air Quality Management District (SCAQMD, or District) is considering several rules to amend or establish BARCT requirements for various sources as those sources transition out of the District's RECLAIM program for nitrogen oxides (NO_x), which is to be accomplished as soon as practicable (with a reduction of five tons per day of NO_x achieved by 2025). These rules are also intended to fulfill part of the District's obligations to implement AB 617's requirement to implement BARCT for emissions units that have not been upgraded since 2007 at sources regulated under CARB's Cap-and-Trade Regulation in nonattainment areas. I further understand the Western States Petroleum Association (WSPA) has proposed allowing facilities to use RECLAIM Trading Credits (RTCs) to comply with NO_x BARCT requirements. Use of RTCs are proposed to be allowed until the last unit meets the NO_x BARCT limit, which could be as late as 2034 for proposed Rule 1109.1. The remainder of this letter focuses on CARB's response to this aspect of that stakeholder's proposal.

Given the requirements of AB 617 to apply controls to achieve the maximum degree of reduction achievable for any criteria pollutant at all emissions units at Cap-and-Trade sources, RTCs or emission reduction credits (ERCs)¹ are not an acceptable means of BARCT compliance, and the District has authority to limit credit use in these contexts.

The use of emission credits to comply with BARCT rules adopted to implement AB 617 would be inconsistent with the requirements and intent of AB 617. AB 617 expressly requires districts to implement BARCT-level controls² at emissions units at sources subject to the Cap-and-Trade Regulation in nonattainment areas, no later than December 31, 2023.³ CARB refers to this requirement as "Expedited BARCT." Districts are to prioritize implementation

¹ For purposes of this letter, we refer to RTCs and ERCs collectively as "emission credits."

² Statute defines BARCT as "an emission 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." Health & Saf. Code § 40406.

³ Health & Saf. Code § 40920.6.

of BARCT at the units that have not modified emissions-related permit conditions for the greatest period of time. The *only* exception is for emissions units that have implemented BARCT due to a permit revision or rule adopted since 2007, the year after Cap-and-Trade was authorized by statute.⁴ The Expedited BARCT requirement was intended to directly address criteria pollutant emissions at the most emissive emissions units, while the Cap-and-Trade Regulation directly addressed facilities' greenhouse gas emissions.

Legislative bill analyses confirm this view—and specifically note that emission credits were not to be used for Expedited BARCT compliance.⁵ For instance, the Assembly Floor Analysis states: “The provision [Section 2 of AB 617, adding new subdivisions (c) and (d) to Health and Safety Code section 40920.6] is not intended to permit the use of emission reduction credits in lieu of installation of BARCT, including marketable emission reduction credits issued under RECLAIM, which is being phased out by SCAQMD.” Thus, both the language and legislative history of AB 617 provide that it is supposed to cause direct emissions reductions at the emission unit level and thereby reduce exposures to communities around industrial sources and respond to disproportionate air quality burdens faced by these vulnerable communities. That goal cannot be achieved through allowing emission credits to be used in lieu of meeting Expedited BARCT requirements.

Districts are only authorized to allow emission credits in lieu of complying with BARCT requirements if the credits are in compliance with state and federal law and if “the credit also complies with all district rules and regulations affecting those credits.”⁶ Allowing the use of these credits to comply with Expedited BARCT rules would prevent achievement of the requirements and intent of the Expedited BARCT provision to bring emissions units at Cap-and-Trade sources in nonattainment areas up to current BARCT-level controls and significantly reduce their emissions. Further, districts have authority to adopt rules to implement state laws for use of credits, which includes the authority to limit or proscribe the use of credits for Expedited BARCT and AB 617 compliance.

⁴ AB 617 was a companion bill with the Cap-and-Trade authorization extension in AB 398 (E. Garcia, 2017). The Cap-and-Trade Program is a market-based trading scheme that achieves greenhouse gas reductions from covered facilities, even if they do not occur on-site. Expedited BARCT was intended to cause criteria emissions reductions at the emissions unit level at Cap-and-Trade sources.

⁵ See California Legislature Bill Analyses. 2017. available at https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB617

⁶ Health & Saf. Code § 40920.6(e).

CARB is happy to discuss this matter with you further, if desired. For any follow-up questions, please feel free to reach out to Cassie Lopina, Cassandra.Lopina@arb.ca.gov, in the Office of Community Air Protection or Courtney Graham, Courtney.Graham@arb.ca.gov, in the Enforcement Division. Thank you for your consideration and dedication in transitioning sources out of RECLAIM. CARB looks forward to continued collaboration.

Sincerely,



Richard W. Corey, Executive Officer

- cc: Susan Nakamura, Assistant Deputy Executive Officer, South Coast Air Quality Management District
Deldi Reyes, Chief, Office of Community Air Protection
Todd Sax, Chief, Enforcement Division
Cassie Lopina, Manager, Technology Assessment Section
Courtney Graham, Manager, Permit Evaluation & Support Section