

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Draft Staff Report Proposed Amendments to Regulation XX – Regional Clean Air Incentives Market (RECLAIM)

Proposed Amended Rule 2001 – Applicability

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Background

The South Coast Air Quality Management District (South Coast AQMD) Governing Board adopted the Regional Clean Air Incentives Market (RECLAIM) program in October 1993. The purpose of RECLAIM is to reduce NO_x and SO_x emissions through a market-based approach. The program replaced a series of existing and future command-and-control rules and was designed to provide facilities with the flexibility to seek the most cost-effective solution to reduce their emissions. It was also designed to provide, in aggregate, equivalent emission reductions to those achieved through a command-and-control regulatory program.

Control Measure CMB-05 of the 2016 Air Quality Management Plan (AQMP) committed to an assessment of the RECLAIM program in order to achieve further NO_x reductions of five tons per day, including actions to sunset the program and ensure future equivalency to command-and-control regulations. During the adoption of the 2016 AQMP, the Resolution directed staff to modify Control Measure CMB-05 to achieve the five tons per day NO_x emission reduction as soon as feasible but no later than 2025, and to transition the RECLAIM program to a command-and-control regulatory structure requiring Best Available Retrofit Control Technology (BARCT) levels as soon as practicable.

On July 26, 2017 California State Assembly Bill (AB) 617 was approved by the Governor, which addresses non-vehicular air pollution (criteria pollutants and toxic air contaminants). It is a companion legislation to AB 398, which was also approved, and extends California's cap-and-trade program, for reducing greenhouse gas emissions from stationary sources. Industrial sources, such as RECLAIM facilities that are in the cap-and-trade program, are subject to the requirements of AB 617. Among the requirements of this bill is an expedited schedule for implementing Best Available Retrofit Control Technology (BARCT) for cap-and-trade facilities. Air districts are to develop an expedited schedule by January 1, 2019 to implement BARCT by December 31, 2023.

Regulatory Background

Rule 2001 was adopted as part of Regulation XX – RECLAIM on October 15, 1993. Rule 2001 contains the applicability provisions for the RECLAIM program, including the criteria and requirements for entering the program. Rule 2001 specified that facilities on the Initial Facility Listing or that have been admitted to RECLAIM could not opt out of the program. On January 5, 2018, Rule 2001 was amended to cease any future inclusions of facilities into NO_x and SO_x RECLAIM.

The October 5, 2018 amendment to Rule 2001 established procedures for facilities to opt out of RECLAIM before receiving an initial determination notification, provided the equipment at the facility met the new criteria. Facilities could submit a request to opt out of the program along with required equipment information. Facilities that satisfy the requirements to opt out would receive an initial determination notification and become

subject to Rule 2002. Rule 2002 contains procedures for obtaining a final determination notification upon receiving an initial determination notification.

United States Environmental Protection Agency Comments

Staff has been discussing with the United States Environmental Protection Agency (U.S. EPA) all elements of transitioning RECLAIM sources to a command-and-control regulatory structure to ensure that the rules relating to the transition will be approved into the State Implementation Plan (SIP). In recent discussions, U.S. EPA expressed concern over facilities exiting RECLAIM before all command-and-control and New Source Review (NSR) requirements are adopted to clearly demonstrate equivalency to the replaced program. U.S. EPA has recommended keeping facilities in RECLAIM until all the rules that are associated with the transition have been adopted and approved into the SIP.

In consideration of U.S. EPA's recommendation, staff is proposing that the opt out provisions in Rule 2001 be removed and that facilities be precluded from exiting the RECLAIM program. Until facilities are required to exit RECLAIM, they will continue to be subject to all RECLAIM requirements including Rule 2005 – New Source Review for RECLAIM, for permitting of new or modified NO_x sources that undergo emission increases. In addition, these facilities will also be required to comply with all the requirements in adopted and amended command-and-control rules that apply to RECLAIM facilities, including the implementation schedules and NO_x limitations. Staff will continue to work with U.S. EPA on NSR for former RECLAIM facilities as well as on all the relevant command-and-control rules for the RECLAIM transition.

Public Process

Staff holds monthly working group meetings to discuss the transition of the NO_x RECLAIM program and to discuss numerous key issues and challenges. The proposed amendments were discussed at the RECLAIM working group meetings. A public consultation meeting was held on May 16, 2019, with the comment period closing on May 31, 2019. PAR 2001 was presented to the Stationary Source Committee on May 17, 2019.

Affected Facilities

The proposed amendments would apply to all facilities in the NO_x RECLAIM program, including facilities that have received initial determination notifications that they are under review for being transitioned out of RECLAIM, and facilities that have submitted an opt out request to exit the RECLAIM program. However, the two facilities that have already exited the RECLAIM program will not be affected. Currently, there are 254 facilities in NO_x RECLAIM that will not be able to exit the program at this time.

Summary of Proposal

The proposed amendments to Regulation XX will affect Rule 2001 – Applicability.

Proposed Amended Rule (PAR) 2001

As a result of discussions with U.S. EPA, it is their recommendation that facilities remain in RECLAIM while NSR issues are resolved and amendments to NSR and RECLAIM requirements, along with all the pertinent command-and-control rules, are adopted and submitted into the SIP. Additionally, stakeholders have expressed concern about facilities exiting from RECLAIM and the potential impact exiting facilities could have on the supply and cost of RTCs. To address the concerns raised, PAR 2001 would no longer allow facilities to exit RECLAIM until all rules relating to the transition are approved into the SIP.

Staff is currently working on proposed rulemaking to address NSR for former RECLAIM facilities, as well as concurrent command-and-control source-specific and industry-specific rules.

Paragraph (g)(1) currently states the criteria for exiting RECLAIM, per the opt out provisions. These opt out provisions would be removed and replaced with:

“On and after [date of amendment], no RECLAIM facility may exit the RECLAIM program.”

Paragraphs (g)(2) and (g)(3), which contain the procedures to opt out, will also be removed. Paragraph (i)(1) contains provisions for excluding certain types of facilities from entering RECLAIM. Among those, are facilities that were removed from RECLAIM due to opting out of the program, under subparagraph (i)(1)(K). Since the opt out provisions are proposed to be removed, this subparagraph would no longer be necessary and is also proposed to be removed.

Facilities that have received an initial determination notification based on the current criteria to exit the RECLAIM program, along with those that have submitted an opt out request, will be notified that they will remain in RECLAIM pursuant to Rule 2002(f)(9). Nevertheless, initial determination notifications will continue to be issued and facilities will still be required to submit the requested equipment information within 45 days pursuant to Rule 2002(f)(6) to prepare for their eventual exit.

Although facilities would not be eligible to exit RECLAIM, a RECLAIM Facility Permit holder of a facility that does not have any NO_x or SO_x emitting sources can modify its permit to not require submittal of Quarterly Certification of Emissions (QCER) and Annual Permit Emission Program (APEP) reports. Pursuant to Rule 2004 paragraph (b)(6), the Facility Permit holder must demonstrate that there are no NO_x or SO_x sources located at the facility and submit an application to have the facility permit amended to ensure that there are no NO_x or SO_x emissions from the facility at all times. This existing provision provides temporary relief from reporting requirements for those facilities that have no NO_x or SO_x emissions during this interim period before exiting.

Once an NSR program for former RECLAIM facilities is developed and SIP-approved, amendments to Regulation XX – RECLAIM are adopted and SIP-approved, and all the necessary command-and-control rules relating to the transition are adopted, amended, and SIP-approved, Rule 2001 will be amended to allow all RECLAIM facilities to exit the program.

Key Issues

Comments were received at the May 16, 2019 Public Consultation and the May 17, 2019 Stationary Source Committee meeting. Stakeholders commented that the overlay of command-and-control with RECLAIM creates a disproportionate impact on RECLAIM facilities over command-and-control facilities, violating Health and Safety Code Section 39616. While that comment is not applicable to the current proposed amendment to Rule 2001, South Coast AQMD nevertheless provides the following response to that concern.

As the statutory language makes clear in section 39616(c), the district board is only required to make the 39616(c)(1)-(7) findings upon the adoption of the rules to implement the market-based incentive program. For that reason, in its resolution adopting the December 4, 2015 RECLAIM amendments, the Board found that section 39616(c) did not apply to those amendments. In addition, section 39616(e) specifies the only time (within 7 years after adoption) in which the district board needs to ratify some of those 39616 findings. It does not include making findings with each amendment. Moreover, the statute supports the conclusion that even if ratification were required, the provision regarding “disproportionate impacts” would not be required to be ratified. Noticeably, the section 39616(c)(7), the provision regarding “disproportionate impacts”, is not one of the findings listed in the seven-year ratification. Finally, any disproportionate impact compared to sources not in RECLAIM should be looked at on an overall basis, not by evaluating each separate element of the program. Thus, even after Rule 2001 is amended, RECLAIM facilities will still enjoy a significant advantage over other facilities in their ability to use RECLAIM NSR provisions, especially the 1 to 1 offset ratio and the ability to use RTCs rather than the scarcer ERCs. On an overall basis, RECLAIM facilities are not disproportionately impacted.

Emission Reductions and Cost Effectiveness

The proposed amendments do not result in any significant effect on air quality and do not result in any emission limitations. As a result, a cost-effectiveness analysis is not required.

AQMP and Legal Mandates

The California Health and Safety Code requires the South Coast AQMD to adopt an Air Quality Management Plan to meet state and federal ambient air quality standards and

adopt rules and regulations that carry out the objectives of the AQMP. This proposed amendment of Regulation XX (Proposed Amended Rule 2001) continues the effort towards the transition of facilities from the RECLAIM program to a command-and-control regulatory structure in order to achieve the commitments of Control Measure CMB-05 of the Final 2016 AQMP.

California Environmental Quality Act (CEQA)

South Coast AQMD staff has reviewed the proposed project pursuant to CEQA Guidelines Section 15002(k) – General Concepts, the three-step process for deciding which document to prepare for a project subject to CEQA and CEQA Guidelines Section 15061 – Review for Exemption, procedures for determining if a project is exempt from CEQA and has determined that Proposed Amended Rule 2001 is exempt from CEQA pursuant to CEQA Guidelines Section 15061 (b)(3) – Common Sense Exemption. Additionally, Proposed Amended Rule 2001 is categorically exempt because it is designed to further protect or enhance the environment pursuant to CEQA Guidelines Section 15308 – Action by Regulatory Agencies for Protection of the Environment. Further, South Coast AQMD staff has determined that there is no substantial evidence indicating that any of the exceptions to the categorical exemptions apply to Proposed Amended Rule 2001 pursuant to CEQA Guidelines Section 15300.2 – Exceptions. A Notice of Exemption will be prepared pursuant to CEQA Guidelines Section 15062 - Notice of Exemption, and if the project is approved, the Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside and San Bernardino counties.

Socioeconomic Analysis

The proposed amendments to Rule 2001 do not significantly affect air quality or emission limitations, and do not impose new controls, and therefore a socioeconomic analysis pursuant to California Health and Safety Code Section 40440.8 is not required.

Draft Findings Under California Health & Safety Code Section 40727

California Health & Safety Code Section 40727 requires that the Board make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the public hearing and in the staff report. In order to determine compliance with Sections 40727 and 40727.2, a written analysis is required comparing the proposed rule with existing regulations.

The draft findings are as follows:

Necessity: PAR 2001 is necessary to prohibit facilities from transitioning out of RECLAIM until rules associated with the transition are approved into the State Implementation Plan by removing provisions for opting out of RECLAIM and adding a provision to preclude facilities from exiting RECLAIM.

Authority: The South Coast AQMD obtains its authority to adopt, amend, or repeal rules and regulations from California Health and Safety Code Sections 39002, 40000, 40001, 40440, 40702, 40725 through 40728, and 41508.

Clarity: PAR 2001 has been written or displayed so that its meaning can be easily understood by the persons affected by the rule.

Consistency: PAR 2001 is in harmony with, and not in conflict with or contradictory to, existing federal or state statutes, court decisions or federal regulations.

Non-Duplication: PAR 2001 does not impose the same requirement as any existing state or federal regulation, and is necessary and proper to execute the powers and duties granted to, and imposed upon the South Coast AQMD.

Reference: In amending this rule, the following statutes which the South Coast AQMD hereby implements, interprets or makes specific are referenced: Health and Safety Code Sections 39002, 40001, 40702, 40440, 40725 through 40728.5, and AB 617.

Comparative Analysis

H&S Code Section 40727.2 (g) is not applicable because the proposed amended rule or regulation does not impose a new or more stringent emissions limit or standard, or other air pollution control monitoring, reporting or recordkeeping requirements. As a result, a comparative analysis is not required.

Incremental Cost Effectiveness

California H&S Code Section 40920.6 requires an incremental cost-effectiveness analysis for BARCT rules or emission reduction strategies when there is more than one control option which would achieve the emission reduction objective of the proposed amendments, relative to ozone, CO, SO_x, NO_x, and their precursors. The proposed amendment does not include new BARCT requirements; therefore this provision does not apply to the proposed amendment.

Conclusions and Recommendations

The proposed amendment is needed to address the transition of RECLAIM sources to command-and-control based on U.S. EPA recommendations. The amendments will no longer allow facilities to opt out of the RECLAIM program and will keep facilities in RECLAIM until all the rules associated with the transition have been adopted and approved into the State Implementation Plan, at which time, facilities will be allowed to exit.