

# **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

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

### **Proposed Amended Rules 2001 – Applicability and 2015 – Backstop Provisions**

**April 26, 2019**

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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<sub>x</sub> and SO<sub>x</sub> 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.

The December 2015 amendment to the RECLAIM program was designed to achieve programmatic NO<sub>x</sub> RECLAIM trading credit (RTC) reductions of 12 tons per day of NO<sub>x</sub> by 2022. A reduction of 12 tons per day of NO<sub>x</sub> would result in NO<sub>x</sub> emission levels of 14.5 tons per day or less by 2022. In addition, 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<sub>x</sub> reductions of five tons per day, including actions to transition RECLAIM facilities to a command-and-control regulatory structure. 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<sub>x</sub> emission reduction as soon as feasible but no later than 2025. Staff is fulfilling this commitment through proposing BARCT rules for NO<sub>x</sub> RECLAIM sources.

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**

Rules 2001 and 2002 were adopted as part of Regulation XX – RECLAIM on October 15, 1993. Rule 2001 contains the applicability 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. Rule 2002 contains the calculation methods for facility allocations and adjustments to RTC holdings.

On January 5, 2018, Rules 2001 and 2002 were amended to commence the initial steps for the RECLAIM transition. Rule 2001 was amended to cease any future inclusions of facilities into NO<sub>x</sub> and SO<sub>x</sub> RECLAIM and Rule 2002 was amended to establish the notification procedures for RECLAIM facilities that will exit the program and also

address the RTC holdings for these facilities. Under Rule 2002, the Executive Officer would issue an initial determination notification to a RECLAIM facility for potential exit to a command-and-control regulatory structure with requirements for the facility to identify all NO<sub>x</sub> emitting equipment. After review of the information, if it is determined that the facility is in compliance with the current applicable command-and-control rules, the Executive Officer would issue the facility a final determination notification that the facility will be exiting RECLAIM.

The October 5, 2018 amendment to Rules 2001 and 2002 established new criteria to be eligible to exit RECLAIM. Facilities would receive an initial determination notification if all their NO<sub>x</sub> emitting equipment was subject to a command-and-control rule, with the exception of some equipment such as emergency engines and most equipment not requiring a permit. 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.

Rule 2015 was also adopted on October 15, 1993 as part of Regulation XX – RECLAIM and contains auditing requirements and backstop provisions to address any problems within the RECLAIM program. Pursuant to Rule 2015, upon discovery of any program specific problems, the Executive Officer could propose to amend the program. If the RECLAIM sources exceed allocations in the aggregate by five percent or more in an annual period, the Executive Officer would propose amendment to the program to address the exceedance, which could include specified recommendations. Rule 2015 also contains a provision that recommends that the Governing Board consider reinstating command-and-control on RECLAIM sources if the approach taken to correct the allocation exceedance was not effective.

Proposed Amended Rule 2015 would provide an alternative to current backstop provisions or NO<sub>x</sub> RECLAIM to reflect implementation of command-and-control rules that South Coast AQMD staff has been developing.

### ***U.S. EPA Comments***

Staff has been discussing with U.S. EPA all elements of transitioning RECLAIM sources to command-and-control 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. These rules include all the command-and-control rules applicable to RECLAIM sources and a NSR program that addresses former RECLAIM facilities.

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 comply with all RECLAIM requirements including Rule 2005 – New Source Review for RECLAIM, for permitting of new or modified NOx sources that undergo emission increases. 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 has held monthly working group meetings to discuss the transition of the NOx RECLAIM program and to discuss numerous key issues and challenges. A public consultation meeting will be held on May 16, 2019, with the comment period closing on May 31, 2019.

## **Affected Facilities**

The proposed amendments would apply to all facilities in the NOx 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 NOx RECLAIM that will not be able to exit the program.

## **Summary of Proposal**

The proposed amendments to Regulation XX will affect Rule 2001 – Applicability and Rule 2015 – Backstop Provisions.

## **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 concerns raised about facilities exiting RECLAIM before the transition of the RECLAIM program to a command-and-control regulatory

structure, PAR 2001 would no longer allow facilities to exit RECLAIM. 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. Proposed Amended Rule 2001(g) would prohibit facilities from exiting the RECLAIM program.

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 for eligibility to exit the RECLAIM program and whether or not they 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 ultimate exit.

Although, facilities would not be eligible to exit RECLAIM, pursuant to Rule 2004 (b)(6), a RECLAIM Facility Permit holder of a facility that does not have any NO<sub>x</sub> or SO<sub>x</sub> emitting sources is not required to submit Quarterly Certification of Emissions (QCER) and Annual Permit Emission Program (APEP) reports. The Facility Permit holder must demonstrate that there are no NO<sub>x</sub> or SO<sub>x</sub> sources located at the facility and submit an application to have the facility permit amended to ensure that there are no NO<sub>x</sub> or SO<sub>x</sub> emissions from the facility at all times. This existing provision provides temporary relief from reporting requirements for those facilities that have no NO<sub>x</sub> or SO<sub>x</sub> emissions during this interim period before exiting.

Once an NSR program for former RECLAIM facilities is developed and SIP-approved and all the command-and-control rules relating to the transition are adopted, amended, and SIP-approved, Rule 2001 will require subsequent amendment in order to allow for RECLAIM facilities to exit the program.

### **Proposed Amended Rule (PAR) 2015**

Rule 2015 specifies RECLAIM program auditing requirements and backstop provisions to address any problems within the program. Upon discovery that emissions from RECLAIM sources in the aggregate exceed the allocation by five percent or greater in an annual period, the Executive Officer is required to propose amendment to the RECLAIM

program. Specific backstop measures are listed as recommendations to amend the program. Among the recommendations are restrictions on RTC trading, enhanced monitoring, and increased rates of emission reductions. In addition, if the approach to address the allocation exceedance is ineffective, the Executive Officer will recommend to the Governing Board to consider reinstating existing command-and-control rules on RECLAIM sources.

As a result of the transition of RECLAIM to a command-and-control regulatory structure, traditional RECLAIM backstop provisions that require amendment to the RECLAIM program may not be as appropriate and effective for addressing an allocation exceedance, especially since command-and-control rulemakings are currently underway to achieve the targeted emission reductions. The RECLAIM program targets year 2022 as the final date to achieve NO<sub>x</sub> emission levels below 14.5 tons per day. The BARCT implementation deadlines for some command-and-control rules extend past year 2022. Staff acknowledges that an overall allocation exceedance could potentially occur during the implementation period of the command-and-control rules and is proposing an alternative to address an overall exceedance that is only temporary for the transition period and would not require amending the RECLAIM program using the existing recommendations.

As an alternative to the backstop provisions requiring proposing amendment to the RECLAIM program, Proposed Amended Rule 2015 would allow for NO<sub>x</sub> RECLAIM that a demonstration be made to show that the implementation of command-and-control rules would result in emission levels below 14.5 tons per day by the implementation of BARCT by the deadline of January 1, 2024 (consistent with the AB 617 deadline for BARCT implementation). The proposed language in paragraph (d)(2) would state:

*“For NO<sub>x</sub> RECLAIM, as an alternative to proposing amendment to the RECLAIM program, the Executive Officer may demonstrate to the Governing Board that actual NO<sub>x</sub> emissions will not exceed 14.5 tons per day on or after January 1, 2024 based on implementation of command-and-control rules that are applicable to RECLAIM sources.”*

Existing paragraph (d)(2) will move to paragraph (d)(3) and would also clarify that the existing backstop provisions in (d)(1) and (d)(3) are still applicable to SO<sub>x</sub> RECLAIM.

An additional proposed change to Rule 2015 would affect the month that the annual RECLAIM program audits are presented to the Governing Board. Paragraph (b)(1) currently states that the annual audits be presented to the Governing Board in a public hearing by March of each subsequent year after January 1996. Staff is proposing to change the month from March to April to allow Engineering and Permitting staff additional time to compile all the relevant information for the annual audit reports.

The proposed amendments to Rule 2015 will allow a demonstration to be made that command-and-control rules pertaining to the transition will result in emission levels below 14.5 tons per day by January 1, 2024 in lieu of proposing amendment to the RECLAIM program if NO<sub>x</sub> emissions temporarily exceed the allocation in the aggregate by five percent or greater in any annual period.

### ***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 Rules 2001 and 2015) continues with the ongoing efforts to the transition of 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)***

Pursuant to the California Environmental Quality Act (CEQA) and South Coast AQMD Rule 110, the South Coast AQMD, as lead agency for the proposed project, will be reviewing PARs 2001 and 2015 and will determine if the proposed project will result in any potential adverse environmental impacts. Appropriate CEQA documentation for the proposed project will be prepared based on the analysis.

### ***Socioeconomic Analysis***

The proposed amendments to Rules 2001 and 2015 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:** PARs 2001 and 2015 are necessary to prohibit facilities from transitioning out of RECLAIM until rules associated with the transition are approved into the State Implementation Plan by precluding facility exit and removing provisions for opting out of RECLAIM and to clarify backstop provisions relevant to the transition of NOx RECLAIM sources to a command-and-control regulatory structure.

**Authority:** The South Coast AQMD obtains its authority to adopt, amend, or repeal rules and regulations from California Health and Safety Code Sections 39002, 39616, 40000, 40001, 40440, 40702, 40725 through 40728, and 41508.

**Clarity:** PARs 2001 and 2015 have been written or displayed so that their meaning can be easily understood by the persons affected by the rules.

**Consistency:** PARs 2001 and 2015 are in harmony with, and not in conflict with or contradictory to, existing federal or state statutes, court decisions or federal regulations.

**Non-Duplication:** PARs 2001 and 2015 do not impose the same requirement as any existing state or federal regulation, and are necessary and proper to execute the powers and duties granted to, and imposed upon the South Coast AQMD.

**Reference:** In amending these rules, 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 rules or regulations do 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<sub>x</sub>, NO<sub>x</sub>, 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 amendments are 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, and facilities are allowed to exit. The proposed amendments will also provide an alternative backstop measure to amending the RECLAIM program that may be used if emissions from NO<sub>x</sub> RECLAIM sources exceed the allocations in the aggregate by five percent or greater in an annual period. The Executive Officer would be required to make a demonstration to show that NO<sub>x</sub> emission levels will be below the 14.5 tons per day allocation by January 1, 2024 by the implementation of all source-specific and industry-specific rules affecting RECLAIM NO<sub>x</sub> emitting equipment.