



COMMUNITIES  
FOR A BETTER  
ENVIRONMENT  
established 1978



March 15, 2022

**VIA: ELECTRONIC MAIL ONLY**

Mike Morris, Planning and Rules Manager  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765  
([mmorris@aqmd.gov](mailto:mmorris@aqmd.gov))

**Re: Proposed Internal Minor and Major Source Emission Reduction Credit Banks**

Dear Mr. Morris:

The undersigned organizations write to express concern about the South Coast AQMD's proposed creation of internal minor and major source emission reduction credit (ERC) banks. The air district's approach will set the stage for a glut of cheap ERCs in the region at the expense of public health.

The air district asserts these internal banks are necessary to "ensure the price of ERCs does not inhibit the decision to modernize" as facilities exit the NO<sub>x</sub> RECLAIM program.<sup>1</sup> The air district, however, has confirmed that facilities would be able to modernize without triggering New Source Review (NSR) and Best Available Control Technology (BACT) requirements from co-pollutant emissions released when modifying equipment and installing pollution controls to meet NO<sub>x</sub> emissions limits under source-specific landing rules. In fact, the air district amended Rules 1304 and 2005 to provide an *exemption* from NSR and BACT requirements when facilities install or modify air pollution control equipment to reduce NO<sub>x</sub> that result in PM<sub>10</sub> and SO<sub>x</sub> emission increases.<sup>2</sup>

Consequently, the proposed ERC internal banks are unnecessary to facilitate facility modernization. Instead, the creation of these internal banks is unjustified and would facilitate expansions and increased air emissions in some of our region's most over-polluted communities, including Carson, West Long Beach, and Wilmington where the air district has made a commitment to reduce emissions. After decades of delays, petroleum refineries and other large polluters are exiting the NO<sub>x</sub> RECLAIM program and finally being

---

<sup>1</sup> SCAQMD, PowerPoint Presentation at Feb. 10, 2022, NO<sub>x</sub> RECLAIM Working Group Meeting, at 7.

<sup>2</sup> SCAQMD, Attachment S to Agenda Package No. 34 for Nov. 5, 2021, Governing Board Meeting: Proposed Amended Rule 1304 – Exemptions & Proposed Amended Rule 2005 – New Source Review for RECLAIM (Nov. 2021); Rule 1304(f) (describing limited BACT exemption for increases of PM<sub>10</sub> or SO<sub>x</sub> from the installation of air pollution controls to reduce NO<sub>x</sub>); Rule 2005(c)(5) (providing an exemption from BACT requirements for SO<sub>x</sub> emissions increases caused by any new or modified source to control NO<sub>x</sub> emissions).

required to install pollution controls or replace high-polluting equipment. By allowing for increased pollution from expansions and increased throughput at former RECLAIM facilities, the proposed internal banks would be a setback for air quality and public health.

The problem in the Open Market is not a lack of available or potential ERCs. Instead, the problem is how the Open Market is being managed by the air district. The air district should explore opportunities to generate ERCs through emissions decreases and to compel facilities with large ERC holdings to sell.

\*\*\*

- **The South Coast AQMD Must Retire Orphan Shutdowns Rather Than Claim Those to Generate ERCs for these Proposed Minor and Major Internal Banks.**

To address the ERC shortage in the Open Market, the air district would create internal minor and major source banks. These internal source banks would be comprised of diverted NO<sub>x</sub>, SO<sub>x</sub>, and PM<sub>10</sub> credits from new “orphan reductions and shutdowns,” which would otherwise go to the existing internal bank for facilities with a potential to emit of less than 4 tons per year.<sup>3</sup> Orphan reductions or shutdowns are “unclaimed” emissions decreases when an “ERC application is not submitted and the operator did not pay its annual permit renewal fee for more than 12 months . . . .” The air district, however, notes that most of these orphan emission decreases are in fact “generated from equipment or process *shutdowns*” rather than process changes or equipment retrofits or replacements.<sup>4</sup> Given that the South Coast Air Basin remains in extreme non-attainment for various National Ambient Air Quality Standards (NAAQs), including ozone and several ozone-precursor pollutants, orphan shutdowns should be preserved and retired by the air district to assist the region in improving air quality and meeting NAAQS.<sup>5</sup>

- **The South Coast AQMD Should Generate New Emission Reductions Through Equipment Retrofits and Replacements, Including Electrification of Industrial Boilers.**

As noted above, given the region’s ongoing air quality problems, orphan shutdowns should be retired. Instead, the air district should consider alternatives to generate new credits in the Open Market. For instance, the air district should consider *electrification* opportunities of industrial equipment to generate new credits, including electrification of industrial heaters and boilers at various facilities throughout the Basin. A model for this approach is New Jersey, which is already taking the lead in phasing out older fossil fuel boilers and heaters that rely on propane, heating oil, and natural gas.<sup>6</sup> In fact, several electric units are BACT and readily available for purchase. The air district should adopt a similar approach for industrial boilers and heaters in the region to generate ERCs.

---

<sup>3</sup> RECLAIM Transition Plan, at 5-1 to 5-3 (Dec. 2020, Draft Version 2.0).

<sup>4</sup> RECLAIM Transition Plan, at 5-2 to 5-3.

<sup>5</sup> SCAQMD, NAAQS/CAAQS and Attainment Status for South Coast Air Basin (Sept. 2018), <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/naaqs-caaqs-feb2016.pdf> (Table Summarizing Attainment of NAAQS).

<sup>6</sup> Tom Johnson, *New NJ rules would crack down on pollution from power plants, trucks, industrial boilers*, NJ Spotlight News, (Dec. 29, 2020), <https://www.njspotlight.com/2020/12/departement-environmental-protection-dep-new-rules-trucks-power-plants-boilers-global-warming-pollution-california-model-critics-cost/>; *see, e.g.*, New Jersey Dep’t of Env’tl. Protection, Proposed Rule N.J.A.C. 7:27F at 41, <https://www.nj.gov/dep/rules/proposals/20211206a.pdf> (rulemaking to require facilities that are seeking a permit for a new fossil fuel-fired boiler to demonstrate that a fossil fuel-free heating mechanism is infeasible).

- **The South Coast AQMD Should Restrict the Length of Time and Amount of ERCs Facilities Are Allowed to Hold, Disallowing Facilities from Withholding ERCs from the Open Market.**

Because the “supply of NO<sub>x</sub> ERCs . . . has been declining and the current supply is low” the South Coast AQMD expects that as RECLAIM facilities exit the program, the current supply of ERCs could be depleted in less than a year.<sup>7</sup> Based on the air district’s assessment, one major reason for the limited ERCs available in the Open Market is that facilities continue to amass significant quantities of credits. In fact, the air district confirms that “[m]any of these ERC owners have held on to their ERCs for *over ten years*,”<sup>8</sup> and notes the “reason for the limited availability of ERCs in the Open Market could be due to facilities holding on to ERCs for future business growth.”<sup>9</sup> In proposing these new internal banks, however, the air district ignores that only a handful of facilities are hoarding credits from being sold or transferred in the Open Market. For instance, based on the air district’s own assessment, 5 out of 36 facilities hold *80 percent* of NO<sub>x</sub> ERCs and another 5 out of 64 facilities hold *66 percent* of PM<sub>10</sub> credits.<sup>10</sup>

Rather than create the internal banks, the air district should explore targeted solutions to compel facilities holding large numbers of credits to sell or transfer credits in the Open Market. In particular, the South Coast AQMD should consider two changes to its administration of ERCs in the Open Market. First, the air district should restrict the length of time facilities can hold onto credits. Given more than half of ERCs are held by a handful of facilities for vague “future business growth” reasons, the air district should restrict how long ERCs are valid after issuance or transfer. This condition would be in addition to the time of use discounting applied by the air district. Second, the air district should cap the amount of ERCs that facilities can hold at any time, requiring ERCs in excess of that threshold to be sold or transferred in the Open Market.

Applying these two changes to how ERCs are managed in the Open Market would assist in increasing ERC availability for facilities exiting RECLAIM and avoid the creation of a large source bank based on problematic orphan shutdowns. The South Coast AQMD should explore opportunities to reform how ERCs are administered in the Open Market rather than turn to policy prescriptions that would significantly increase the availability of cheap credits for polluters through the creation of new internal banks that would exist parallel to the Open Market.

- **The South Coast AQMD Cannot Claim Orphan Reductions and Shutdowns from Compliance with Source Specific Limits for Facilities Exiting the NO<sub>x</sub> RECLAIM Program.**

The South Coast AQMD Rule 1309 does not authorize the issuance of a new ERC where emissions decreases are from equipment/process changes or shutdowns to comply with any air district rule or other regulation.<sup>11</sup> Similarly, *orphan* reductions from any “physical change and/or change to the method of operation” or *orphan* shutdowns from the “removal of source from service” at a facility *excludes* those “required by rule, regulation, law, approved Air Quality Management Plan Control Measure, or the State Implementation Plan.”<sup>12</sup> Consequently, any orphan reductions and shutdowns due to compliance with

---

<sup>7</sup> RECLAIM Transition Plan, at 4-5.

<sup>8</sup> RECLAIM Transition Plan, at 4-6.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Rule 1309(b)(5) (applications for ERCs related to new emissions reductions can *only* be considered if the “reductions from the same equipment type as those proposed by the applicant *are not* . . . required by a proposed District rule . . . [or] an adopted federal, State, or District rule, regulation or statute.”).

<sup>12</sup> Rule 1315(b)(4), (5) (defining what constitutes an orphan reduction or shutdown).

source-specific rules developed under the RECLAIM transition cannot be claimed by facilities or the air district. Indeed, during the Regulation XIII Working Group Meeting on February 10, 2022, staff confirmed the air district would not claim orphan reductions or shutdowns from compliance with landing rules. Thus, the air district must elaborate on the sources of orphan reductions or shutdowns that would be used to seed the internal banks.

- **The South Coast AQMD Does Not Propose Adequate Limits on the Types of Projects or Industries Seeking to Access the Proposed Internal Bank ERCs.**

Even if the proposed internal ERC banks were the right approach to assist facilities seeking to modernize, the South Coast AQMD fails to provide any restrictions on how and when these ERCs should be authorized. For instance, facilities are not restricted from using these credits if the new equipment or modifications would result in expanded operations or throughput at the facility. Facilities are not required to demonstrate that ERCs in the Open Market were unavailable before accessing the internal bank. Further, the air district would not prohibit specific facilities holding the bulk of Open Market ERCs from also accessing the internal banks. Nor does the air district consider prohibiting specific industries operating in over polluted communities and that have historically been the largest polluters within and beneficiaries of the NO<sub>x</sub> RECLAIM program, such as the petroleum refining sector, from accessing the internal banks.

- **The South Coast AQMD Should Conduct a Thorough Audit of ERCs in the Open Market to Confirm the Validity of Existing Credits, Prior to Creating New Internal ERC Banks.**

As confirmed by South Coast AQMD, “[a]n overt emission reduction action must occur to generate [] ERCs.”<sup>13</sup> These emissions reductions must be “real, quantifiable, surplus, permanent, and enforceable.”<sup>14</sup> As the air district recognizes, there is a history of questionable, invalid credits in the Open Market. Even if the agency proceeds with the creation of new internal banks, the air district should commit to auditing ERCs in the Open Market to identify and remove unlawful credits. Moreover, the air district should commit to adopting appropriate procedures to quantify and verify any credits from orphan reductions and shutdowns for the major source internal bank using reliable supporting information, not merely emissions inventories or emission factors that the air district suggests could be used to generate ERCs.

\*\*\*

The original reason for crediting these internal banks was speculative. The air district has now confirmed that facilities exiting the RECLAIM program would be able to modernize without the need for a significant amount of ERCs (if any). The air district’s approach would create a parallel agency-propped up market to the Open Market, which would result in a flood of cheap credits for some of the largest polluters in the region when facilities with large holdings decide to sell or a spike in new ERCs occurs in the Open Market. We welcome the opportunity to discuss these issues and would appreciate a response from the air district regarding the concerns outlined in this letter.

Sincerely,

---

<sup>13</sup> RECLAIM Transition Plan, at 4-3.

<sup>14</sup> *Ibid.*

Oscar Espino-Padron, Attorney  
Shana E. Emile, Attorney  
Earthjustice

Jan Victor Andasan, Community Organizer  
East Yard Communities for Environmental Justice

Alison Hahm, Staff Attorney  
Communities for a Better Environment

Maya Golden-Krasner, Senior Attorney  
Climate Law Institute  
Center for Biological Diversity

Nicole Levin, Campaign Representative  
Beyond Dirty Fuels Campaign  
Sierra Club

cc: Michael Krause, Assistant Deputy Executive Officer ([mkrause@aqmd.gov](mailto:mkrause@aqmd.gov))