

State of California
AIR RESOURCES BOARD

**ATTAINMENT CONTINGENCY MEASURES FOR THE 8-HOUR OZONE STANDARD
IN THE COACHELLA VALLEY**

Resolution 17-13

April 27, 2017

Agenda Item No.: 17-4-1

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the California Air Resources Board (CARB or Board) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, CARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standard (NAAQS) as required by the federal Clean Air Act (Act) (42 U.S.C. § 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) as necessary to comply with the Act;

WHEREAS, section 39602 of the Health and Safety Code also provides that the SIP shall include only those provisions necessary to meet the requirements of the Act;

WHEREAS, section 41650 of the Health and Safety Code requires CARB to approve the nonattainment area plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, CARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, CARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any power, duty, purpose, function or jurisdiction of the Board may be delegated to the CARB Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to

attain the NAAQS within their boundaries pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the Riverside County portion of the Salton Sea Air Basin (Coachella Valley), pursuant to sections 40410 and 40413 of the Health and Safety Code, and California Code of Regulations, title 17, section 60104;

WHEREAS, section 40469(a) of the Health and Safety Code requires CARB to determine the adequacy of the nonattainment area plan adopted by the District to meet the requirements of State law and the federal Act;

WHEREAS, on March 27, 2008, the United States Environmental Protection Agency (U.S. EPA) strengthened the 8-hour ozone NAAQS to 75 parts per billion (ppb);

WHEREAS, on July 20, 2012, U.S. EPA designated the Coachella Valley as a Severe nonattainment area for the 75 ppb 8-hour ozone NAAQS with a 2026 attainment deadline;

WHEREAS, on March 6, 2015, U.S. EPA finalized the implementation rule (Ozone Rule) that established the planning requirements for the 75 ppb 8-hour ozone NAAQS;

WHEREAS, the Act and the Ozone Rule require ozone nonattainment area SIPs to include contingency measures for attainment;

WHEREAS, the District developed the 2016 Air Quality Management Plan (2016 AQMP) in part to meet the Coachella Valley Severe nonattainment area planning requirements for the 75 ppb 8-hour ozone NAAQS;

WHEREAS, the 2016 AQMP demonstrates the Coachella Valley will attain the 75 ppb 8-hour ozone NAAQS by 2026;

WHEREAS, the 2016 AQMP meets the requirements of the Act related to ozone for the Coachella Valley nonattainment area with the exception of attainment contingency measures;

WHEREAS, On March 23, 2017, CARB adopted the 2016 AQMP for Coachella Valley with the exception of attainment contingency measures;

WHEREAS, on March 24, 2017, CARB released the Staff Report for the Coachella Valley 8-hour Ozone Standard Attainment Contingency measures (Staff Report) for public comment;

WHEREAS, under its previous guidance, the U.S. EPA has said that contingency measures are additional measures to be implemented in the event the area fails to attain by the deadline, must be ready to be implemented upon failure to attain, and are

to provide extra reductions that are not relied on for attainment while the implementation plan is being revised to fully address the failure, and that nothing in the Act precludes implementing such measures before they are triggered (see 79 Fed.Reg. 61799, 61816 (Oct. 15, 2014));

WHEREAS, a recent decision by the U.S. Court of Appeals for the Ninth Circuit, in *Bahr v. U.S. Environmental Protection Agency* (9th Cir. 2016) 836 F.3d 1218, addressed the U.S. EPA's previous interpretation of contingency measure requirements under the Act;

WHEREAS, the Staff Report identifies attainment contingencies of new emission reductions in the future from continued implementation of existing requirements beyond what is needed for attainment, and that will continue to accrue even if the area fails to attain, while the implementation plan is revised to address a failure to attain; and

WHEREAS, the Staff Report identifies sufficient contingency measures for attainment consistent with sections 172(c)(9) and 182(c)(9) of the Act, as interpreted by previous U.S. EPA guidance, that require contingency measures that provide extra emission reductions that go into effect without further regulatory action if an area fails to attain on time;

WHEREAS, CARB will work with U.S. EPA and the District to resolve any issues with the contingency measures identified in the Staff Report in light of *Bahr* and any revised guidance, and to submit a plan revision to U.S. EPA as appropriate;

WHEREAS, federal law set forth in section 110(l) of the Act and Title 40, Code of Federal Regulations (CFR), section 51.102, requires that one or more public hearings, preceded by at least 30 days notice and opportunity for public review, must be conducted prior to adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, CARB made the Staff Report available for public review at least 30 days before the public hearing on this matter;

WHEREAS, ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California Environmental Quality Act (CEQA; see Cal. Code of Regs., tit. 14, § 15251(d)), and CARB conducts its CEQA review according to this certified program (Cal. Code of Regs., tit. 17, §§ 60000-60007); and

WHEREAS, staff has determined that adoption of the Coachella Valley 8-hour Ozone Standard Attainment Contingency as a SIP revision is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) (the "common sense" exemption) because the record evidence shows with certainty that the contingency measures upon which the Coachella Valley 8-hour Ozone Standard Attainment Contingency relies were previously adopted and are already effective, and this adoption is only to incorporate the contingency measures as a SIP revision, and therefore there is no possibility that the

adoption of the Coachella Valley 8-hour Ozone Standard Attainment Contingency may result in a significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED the Board finds that the Staff Report identifies attainment contingencies of new emission reductions in the future from continued implementation of existing requirements beyond what is needed for attainment, that will continue to accrue even if the area fails to attain, while the implementation plan is revised to address a failure to attain.

BE IT FURTHER RESOLVED the Board finds that the Staff Report demonstrates the Coachella Valley 8-hour Ozone Attainment Contingency meets previous U.S. EPA guidance for the attainment contingency requirement of the Act as a Severe ozone nonattainment area for the 75 ppb 8-hour ozone NAAQS.

BE IT FURTHER RESOLVED the Board finds that adoption of the Coachella Valley 8-hour Ozone Standard Attainment Contingency as a SIP revision is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3), because substantial evidence in the record shows with certainty that the contingency measures upon which the Coachella Valley 8-hour Ozone Standard Attainment Contingency relies were previously adopted and are already effective; and this adoption is only to incorporate the contingency measures as a SIP revision; and therefore there is no possibility that the adoption of the Coachella Valley 8-hour Ozone Standard Attainment Contingency may result in a significant adverse impact on the environment.

BE IT FURTHER RESOLVED that the Board hereby adopts the Staff Report for the Coachella Valley 8-hour Ozone Attainment Contingency as an amendment to the California SIP and directs the Executive Officer to forward the Staff Report for the Coachella Valley 8-hour Ozone Attainment Contingency to U.S. EPA for inclusion in the SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board hereby certifies that the Staff Report for the Coachella Valley 8-hour Ozone Attainment Contingency was adopted after notice and public hearing as required by Section 110(l) of the Act and 40 CFR section 51.102.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

I hereby certify that the above is a true and correct copy of Resolution 17-13 as adopted by the Air Resources Board.

Rana McReynolds, Clerk of the Board