

State of California  
AIR RESOURCES BOARD

**SAN JOAQUIN VALLEY PM2.5 CONTINGENCY MEASURES**

Resolution 17-27

**September 28, 2017**

Agenda Item No.: 17-9-3

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 Standards (NAAQS or standards) as required by the federal Clean Air Act (the Act) (42 U.S.C. section 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) 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 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 San Joaquin Valley Air Basin (San Joaquin Valley) includes Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare, and western Kern Counties, as described in California Code of Regulations, title 17, section 60107;

WHEREAS, the San Joaquin Valley Air Pollution Control District (District) is the air quality planning agency for the San Joaquin Valley, under section 40600 of the Health and Safety Code;

WHEREAS, in July 1997, the United States Environmental Protection Agency (U.S. EPA) promulgated 24-hour and annual NAAQS for fine particulate matter (PM<sub>2.5</sub>) of 65 µg/m<sup>3</sup> and 15 µg/m<sup>3</sup>, respectively;

WHEREAS, effective April 5, 2005, U.S. EPA designated the San Joaquin Valley as nonattainment for the 1997 PM<sub>2.5</sub> NAAQS;

WHEREAS, section 172, subdivision (c)(9), of the Act requires that nonattainment plans provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator;

WHEREAS, on July 3, 2013, CARB made a submission to U.S. EPA to address contingency measure requirements for the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS in the San Joaquin Valley that relied upon the benefits of California mobile source control measures (2013 Contingency Measure Submission), and U.S. EPA approved this submission on May 22, 2014;

WHEREAS, U.S. Court of Appeals for the Ninth Circuit decision in *Committee for a Better Arvin v. EPA (Arvin)*, (9th Cir. 2015) 786 F.3d 1169 rejected U.S. EPA's rationale for approving SIPs that rely on reductions from California mobile source control measures authorized under the waiver/authorization provisions of the Act that were not separately submitted into the SIP;

WHEREAS, on May 12, 2016, U.S. EPA withdrew its approval of the 2013 Contingency Measure Submission due to the reliance on California mobile source control waiver/authorization measures that were not separately submitted into the SIP;

WHEREAS, CARB submitted the waiver/authorization measures into the SIP and U.S. EPA approved them on June 16, 2016;

WHEREAS, U.S. EPA's withdrawal of approval for the 2013 Contingency Measure Submission necessitated submission of contingency measures for the 1997 annual and 24-hour PM<sub>2.5</sub> NAAQS in the San Joaquin Valley;

WHEREAS, with the May 12, 2016 withdrawal, U.S. EPA began a sanctions clock that will impose initial sanctions on December 13, 2017 if the deficiency is not resolved;

WHEREAS, CARB and District staff are working on a comprehensive SIP designed to provide an integrated attainment strategy for meeting multiple PM<sub>2.5</sub> standards over the next eight years;

WHEREAS, the comprehensive SIP described above will include the complete suite of SIP elements; however, CARB staff is advancing this SIP revision for the 15 µg/m<sup>3</sup> standard attainment contingency measures to address the sanctions clock noted above;

WHEREAS, CARB staff have determined that the attainment date for the 15 µg/m<sup>3</sup> annual standard is December 31, 2020;

WHEREAS, CARB staff has determined, based on available information, that projecting attainment of the 15 µg/m<sup>3</sup> PM<sub>2.5</sub> standard by 2020 is appropriate for the advanced development of the contingency measures described in this Resolution 17-27, though CARB staff will continue to work with the District to develop final modeling that will be included in the comprehensive SIP described above;

WHEREAS, in its Staff Report, CARB staff described the contingency measures described in this Resolution 17-27 as being for San Joaquin Valley's potential failure to attain the annual 15 µg/m<sup>3</sup> PM<sub>2.5</sub> standard by 2020;

WHEREAS, the contingency measures described in this Resolution 17-27 are intended to be and are suitable to apply broadly to San Joaquin Valley's potential failure to attain either the annual 15 µg/m<sup>3</sup> PM<sub>2.5</sub> standard or the 24-hour 65 µg/m<sup>3</sup> PM<sub>2.5</sub> standard by 2020, consistent with the title of this Board item as publically noticed (i.e. "NOTICE OF PUBLIC MEETING TO . . . CONSIDER THE SAN JOAQUIN VALLEY PM<sub>2.5</sub> CONTINGENCY MEASURES");

WHEREAS, Section 189, subdivision (d), of the Act requires that when an area fails to attain, the SIP must provide for an annual reduction in PM<sub>10</sub> or PM<sub>10</sub> precursors within the area of not less than five percent each year;

WHEREAS, CARB staff selected the precursor NO<sub>x</sub> to meet the Section 189, subdivision (d) requirement because prior SIPs have shown that NO<sub>x</sub> controls are the most effective at reducing PM<sub>2.5</sub> concentrations which is critical to the attainment demonstration;

WHEREAS, consistent with prior U.S. EPA actions (see e.g. 69 Fed.Reg. 30006, 30035 (May 26, 2004)), CARB staff has interpreted that the five percent requirement meets the reasonable further progress requirement since the reductions provide the annual increment needed for attainment;

WHEREAS, U.S. EPA's Region 9 historically approved nonattainment SIPs that featured contingency measures that relied upon reductions from measures already implemented as part of the measures meeting the core reasonably available control measure requirement if those measures also provided excess emission reductions beyond what was required for attainment or reasonable further progress;

WHEREAS, U.S. EPA has stated that "the purpose of contingency measures is to provide extra reductions that will provide a cushion while the plan is being revised to fully address the failure to [attain or make reasonable further progress]." (79 Fed.Reg. 61799, 61815 (Oct. 15, 2014));

WHEREAS, since the Act and the Code of Federal Regulations (CFR) are silent on the specific level of emission reductions, U.S. EPA has generally accepted contingency measures that "equal approximately 1 year's worth of emission reductions necessary to achieve [reasonable further progress] for the area." (72 Fed.Reg. 20586, 20643 (Apr. 25, 2007));

WHEREAS, U.S. EPA has accepted contingency measures that equal less than a year's worth of RFP when the circumstances fit under EPA's long-standing recommendation that states should consider "the potential nature and extent of any attainment shortfall for the area" and that contingency measures "should represent a portion of the actual emissions reductions necessary to bring about attainment in the area." (78 Fed.Reg. 37741, 37750 (Jun. 24, 2013));

WHEREAS, U.S. EPA has stated that it is reasonable that contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or [reasonable further progress] is not achieved, or if an area fails to attain the standard by its statutory attainment date and additional planning is needed by the State. (72 Fed. Reg. at 20,643);

WHEREAS, CARB's mobile source program, which includes the Advanced Clean Cars, On-Road Heavy-Duty Diesel Vehicles Regulation (Truck and Bus), and Off-Road Equipment regulations, is projected to provide 12 tons per day of new NO<sub>x</sub> reductions between 2020 and 2021 which is approximately one year's worth of reasonable further progress towards the PM<sub>2.5</sub> standard;

WHEREAS, the projected 12 tons per day of new NO<sub>x</sub> reductions between 2020 and 2021 from CARB's mobile source program are new reductions beyond those required for attainment and which do not occur until 2020;

WHEREAS, a decision by the U.S. Court of Appeals for the Ninth Circuit in October 2016, *Bahr v. U.S. Environmental Protection Agency* (9th Cir. 2016) 836 F.3d 1218, addressed Region 9's interpretation of contingency measure requirements under the Act and determined that total reliance on excess emission reductions from already implemented measures for contingency purposes was inadequate under the Act, the court also found that contingency measures need to include some action that is not yet occurring but that will be implemented in the future if triggered by a failure to attain;

WHEREAS, CARB's existing enforcement activities in the San Joaquin Valley target violations of the following CARB regulations: On-Road Heavy-Duty Diesel Vehicles Regulation (Truck and Bus Regulation) (Cal. Code Regs., tit.13, § 2025), Transport Refrigeration Unit ATCM (Cal. Code Regs., tit.13, § 2477, et seq.), In-Use Off-Road Diesel Vehicles Regulation (Cal. Code Regs., tit.13, § 2449, et seq.), Periodic Smoke Inspection Program (Cal. Code Regs., tit.13, § 2190, et seq.), and Heavy-Duty Diesel Vehicle Inspection Program (Cal. Code Regs., tit.13, § 2180, et seq.);

WHEREAS, CARB's Truck and Bus Regulation, Transport Refrigeration Unit ATCM, In-Use Off-Road Diesel Vehicles Regulation, Periodic Smoke Inspection Program, and Heavy-Duty Diesel Vehicle Inspection Program all target the heavy-duty vehicle fleet activities that represent almost half of the NO<sub>x</sub> emissions which are necessary to meet the 15 µg/m<sup>3</sup> standard in the San Joaquin Valley;

WHEREAS, CARB has the authority and logistical capability to rapidly increase its existing enforcement activities in the San Joaquin Valley if triggered;

WHEREAS, an increase in the existing level of enforcement activities in the San Joaquin Valley would likely result in an increase in violations identified;

WHEREAS, identification of a violation of the Truck and Bus Regulation, Transport Refrigeration Unit ATCM, In-Use Off-Road Diesel Vehicles Regulation, Periodic Smoke Inspection Program, or Heavy-Duty Diesel Vehicle Inspection Program will result in CARB taking action to require the vehicle or equipment to come into compliance with applicable regulations;

WHEREAS, the increasing fleet inspections can identify additional noncompliant fleets in the San Joaquin Valley;

WHEREAS, increasing the level of enforcement activities in the San Joaquin Valley can be triggered as needed consistent with the *Bahr* decision;

WHEREAS, a staff report describing these contingency measures was developed and released to the public for comment consistent with the relevant Clean Air Act procedural requirements;

WHEREAS, the staff report demonstrates that the contingency measures are otherwise consistent with the Clean Air Act, including demonstrating that the measures are quantifiable, surplus, enforceable, and permanent;

WHEREAS, CARB'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; Cal. Code Regs., tit. 14, § 15251(d)), and CARB conducts its CEQA review according to this certified program (Cal. Code Regs., tit. 17, §§ 60000-60007); and

WHEREAS, staff has determined that the proposed project is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) (“common sense” exemption), because the record evidence shows with certainty that there is no possibility the proposed activity may result in a significant adverse impact on the environment, as described in Chapter IV of the Staff Report.

NOW, THEREFORE, BE IT RESOLVED that this contingency measure for the 1997 PM<sub>2.5</sub> NAAQS in the San Joaquin Valley consists of three complementary elements that together fully address the contingency measure requirements of the Act as interpreted in *Bahr*:

- 1) Inclusion of a trigger mechanism directing the Executive Officer to allocate resources and enhance enforcement activities in the San Joaquin Valley to provide additional NOx reductions in the event that U.S. EPA determines the San Joaquin Valley failed to attain in 2020;
- 2) New NOx emission reductions that provide for approximately one year’s worth of progress that will be achieved through ongoing implementation of CARB’s mobile source program; and
- 3) A commitment for development and submission of a new SIP to U.S. EPA within one year of the San Joaquin Valley’s failure to attain.

BE IT FURTHER RESOLVED that the Board hereby directs the Executive Officer to enhance enforcement activities within the District as detailed below (Enhanced Enforcement Activities), within 60 days of U.S. EPA publishing a finding in the Federal Register that the district has failed to attain the 1997 PM<sub>2.5</sub> NAAQS or make reasonable further progress towards attainment.

BE IT FURTHER RESOLVED that the Enhanced Enforcement Activities will target violations of some or all of the following CARB regulations: Truck and Bus Regulation (Cal. Code Regs., tit.13, § 2025), Transport Refrigeration Unit ATCM (Cal. Code Regs., tit.13, § 2477, et seq.), In-Use Off-Road Diesel Vehicles Regulation (Cal. Code Regs., tit.13, § 2449, et seq.), Periodic Smoke Inspection Program (Cal. Code Regs., tit.13, § 2190, et seq.), and Heavy-Duty Diesel Vehicle Inspection Program (Cal. Code Regs., tit.13, § 2180, et seq.), (collectively, the Enhanced Enforcement Regulations).

BE IT FURTHER RESOLVED that the Enhanced Enforcement Activities will minimally consist of:

- Increasing field enforcement staffing for some or all of the Enhanced Enforcement Regulations in the San Joaquin Valley by 50 percent above the pre-trigger deployment, and
- Assigning one staff member, beyond pre-trigger deployment, to focused investigations of companies located in the San Joaquin Valley and/or that

operate vehicles or equipment subject to some or all of the Enhanced Enforcement Regulations in the San Joaquin Valley.

BE IT FURTHER RESOLVED that once initiated, the Enhanced Enforcement Activities will continue until CARB submits a revised PM<sub>2.5</sub> SIP for the San Joaquin Valley to U.S. EPA as required by any Finding of Failure.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to provide initial notice to U.S. EPA that Enhanced Enforcement Activities have begun, and to subsequently submit quarterly updates to U.S. EPA quantifying the Enhanced Enforcement Activities taken pursuant to this Resolution during the time the Enhanced Enforcement Activities are in effect.

BE IT FURTHER RESOLVED the Board finds that:

1. The Enhanced Enforcement Activities meet the requirements of the Act as interpreted by *Bahr* in that they comprise specific measures that take effect in the future if an area fails to meet the required condition, without further action by the State or U.S. EPA Administrator.
2. Enhanced enforcement of the Enhanced Enforcement Regulations is appropriate as a contingency measure for the 15 µg/m<sup>3</sup> standard because these regulations all target heavy-duty vehicle fleet activities which represent almost half of the NO<sub>x</sub> emissions in the San Joaquin Valley.
3. Reductions in NO<sub>x</sub> emissions in the San Joaquin Valley would provide the bulk of the emission reductions necessary to meet the 15 µg/m<sup>3</sup> standard.
4. The Enhanced Enforcement Activities are estimated to result in 0.03 tons per day of NO<sub>x</sub> reductions.
5. Considering the volume of emission reductions that will occur in San Joaquin Valley from CARB's ongoing mobile source control programs, the reductions from the Enhanced Enforcement Activities, if triggered, and considered in the aggregate with ongoing reductions, and in the context of the limited time pending plan revision, are adequate to provide extra reductions that will act as a "cushion" while the plan is revised to fully address any failure to attain or make reasonable further progress.
6. The reductions that would result from this contingency measure, if triggered, are quantifiable, surplus, enforceable and permanent within the meaning of U.S. EPA guidance.
7. The proposed project 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 there is no possibility that the proposal may result in a significant adverse impact on the environment.

8. As indicated in the title of this Board item as publically noticed the contingency measures contained in this Resolution 17-27 will be triggered by U.S. EPA publishing a finding that the San Joaquin Valley has failed to attain either the annual 15  $\mu\text{g}/\text{m}^3$   $\text{PM}_{2.5}$  standard or the 24 hour 65  $\mu\text{g}/\text{m}^3$   $\text{PM}_{2.5}$  standard.

BE IT FURTHER RESOLVED that the Board hereby adopts the contingency measures described in this Resolution 17-27 as an amendment to the California SIP and directs the Executive Officer to forward it 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 this Resolution 17-27 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 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 17-27 as adopted by the California Air Resources Board.

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Rana McReynolds, Clerk of the Board