

PROPOSED

State of California
CALIFORNIA AIR RESOURCES BOARD

OZONE STATE IMPLEMENTATION PLAN FOR THE WESTERN MOJAVE DESERT

Resolution 17-12

May 25, 2017

Agenda Item No.: 17-5-2

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

WHEREAS, ARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (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 ARB to adopt the nonattainment plan approved 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, ARB 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, ARB 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 ARB 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 standard within their boundaries, pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

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

WHEREAS, effective July 20, 2012, U.S. EPA designated the Western Mojave Desert as nonattainment for the 75 ppb 8-hour ozone standard with a Severe classification and attainment date of July 20, 2027;

WHEREAS, the Western Mojave Desert Ozone Nonattainment Area is comprised of the southeastern portion of San Bernardino County, and the northeastern portion of Los Angeles County known as Antelope Valley;

WHEREAS, the Mojave Desert Air Quality Management District (Mojave Desert AQMD) is the local air district and planning agency for all of San Bernardino County and Riverside County that is not included within the boundaries of the South Coast Air Quality Management District, as defined in Health and Safety Code Section 41210;

WHEREAS, the Antelope Valley Air Quality Management District (Antelope Valley AQMD) is the local air district and planning agency for the Antelope Valley portion of Los Angeles County, as defined in Health and Safety Code Section 41300;

WHEREAS, the Act requires that a Severe nonattainment area ozone SIP include an emissions inventory, a reasonably available control technology (RACT) demonstration, a reasonably available control measures (RACM) analysis, a reasonable further progress (RFP) demonstration, an attainment demonstration, attainment contingency measures, a vehicle miles traveled (VMT) offset demonstration and transportation conformity budgets;

WHEREAS, the Mojave Desert AQMD developed the *Mojave Desert Federal 75 ppb Ozone Nonattainment Plan for the Western Mojave Desert Nonattainment Area* (Mojave Desert Ozone Plan) to meet the Severe ozone nonattainment area planning requirements for the 75 ppb 8-hour ozone standard;

WHEREAS, the Antelope Valley AQMD developed the *Antelope Valley Federal 75 ppb Ozone Nonattainment Plan for the Western Mojave Desert Nonattainment Area* (Antelope Valley Ozone Plan) to meet the Severe ozone nonattainment area planning requirements for the 75 ppb 8-hour ozone standard;

WHEREAS, the Mojave Desert Ozone Plan and the Antelope Valley Ozone Plan represent the air quality improvement efforts of the two separate air districts that serve the Western Mojave Desert ozone nonattainment area, and together constitute the ozone nonattainment plan (or Ozone Plan) for the area;

WHEREAS, ARB staff conducted a review of the Ozone Plan and the ARB Review of the Ozone Plan (ARB Staff Report) includes supplemental emissions inventory documentation, a weight of evidence analysis, a list of mobile source regulations for the VMT offset demonstration, an emission statement certification, a RACM assessment

and a list of adopted California mobile source control measures, which were made available for public review at least 30 days prior to the May 25, 2017, ARB public hearing;

WHEREAS, ARB staff released an Addendum to Staff Report on May 25, 2017 that corrected the descriptions of conformity budgets in the Staff Report to match that outlined in the districts' plans made publically available during the districts' 30-day public processes;

WHEREAS, ARB staff concluded the Ozone Plan, along with the elements included in the ARB Staff Report, meet the requirements of the Act;

WHEREAS, consistent with section 172(c)(3) of the Act, the Ozone Plan includes a comprehensive, accurate, current inventory of emissions data of oxides of nitrogen (NOx) and reactive organic gases (ROG);

WHEREAS, consistent with sections 181(a) and 182(c)(2) of the Act, the Ozone Plan includes an attainment demonstration that shows attainment as expeditiously as practicable by the Severe area deadline of July 20, 2027;

WHEREAS, consistent with section 172(c)(1) of the Act, the Ozone Plan demonstrates RACM;

WHEREAS, consistent with sections 172(c)(2) and 182(c)(2) of the Act, the Ozone Plan identifies emission levels that demonstrate RFP through the attainment year;

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 Ozone Plan identifies sufficient contingency measures for RFP and attainment consistent with sections 172(c)(9) and 182(c)(9) of the Act, as interpreted by previous U.S. EPA guidance;

WHEREAS, ARB will work with the U.S. EPA and the District to resolve any issues with the contingency measures identified in the Ozone Plan in light of *Bahr v. U.S. Environmental Protection* and any revised guidance, and to submit a plan revision to U.S. EPA as appropriate;

WHEREAS, consistent with section 176 of the Act, the Ozone Plan establishes transportation conformity emission budgets, developed in consultation between the districts and the regional transportation agency, that conform to the attainment emission levels;

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 of notice and opportunity for public review, must be conducted before adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by the Act, the Mojave Desert Ozone Plan was made available for public review at least 30 days prior to the February 27, 2017, public hearing where the Mojave Desert AQMD Governing Board approved the Mojave Desert Ozone Plan;

WHEREAS, as required by the Act, the Antelope Valley Ozone Plan was made available for public review at least 30 days prior to the March 21, 2017, public hearing where the Antelope Valley AQMD Governing Board approved the Antelope Valley Ozone Plan;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, to meet its obligations under CEQA, the districts determined that the Ozone Plans are exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) (the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment) and under California Code of Regulations, title 14, section 15308 (actions taken by a regulatory agency for protection of the environment) and the Ozone Plan will not result in any potentially significant adverse effects on the environment; and

WHEREAS, ARB has determined that its subsequent adoption of the Ozone Plan is a “ministerial” adoption for purposes of CEQA (California Code of Regulations, title 14, §15268) because ARB’s review is limited to determining if the Ozone Plans meet the requirements of the Act, and ARB lacks authority to modify or not adopt the Ozone Plans in response to environmental concerns, as described in the ARB Staff Report.

NOW, THEREFORE, BASED ON THE FOREGOING, the Board finds that:

1. The Ozone Plan, along with the supplemental emissions inventory documentation, weight of evidence analysis, list of mobile source regulations for the VMT offset demonstration, emission statement certification, RACM assessment and list of adopted California mobile source control measures in the ARB Staff Report, meet the requirements of the Act for a Severe ozone nonattainment area;
2. The Ozone Plan, along with the ARB Staff Report, includes the required air quality data, emissions inventory, a RACT demonstration, a RACM analysis, an RFP demonstration, an attainment demonstration, attainment contingency measures, a VMT offset demonstration and transportation conformity budgets for 2018, 2021, 2024, and 2026;

3. The Ozone Plan, along with the ARB Staff Report, include the required emissions data and supporting documentation;
4. Ongoing implementation of ARB and district control programs provides the emission reductions needed for meeting the 75 ppb 8-hour ozone standard by the attainment deadline; and
5. ARB's review and adoption of the Ozone Plan submitted by the districts for inclusion in the California SIP is a ministerial activity for purposes of CEQA.

BE IT RESOLVED that the Board hereby adopts the Ozone Plan and the ARB Staff Report as revisions to the California SIP.

BE IT FURTHER RESOLVED that the Board hereby directs the Executive Officer to submit the Ozone Plan as adopted by the districts and the supplemental information in the ARB Staff Report to U.S. EPA for inclusion in the California SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the districts 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.

BE IT FURTHER RESOLVED that the Board hereby certifies that the Ozone Plan and ARB Staff Report were adopted after notice and public hearing as required by Section 110(l) of the Act and 40 CFR section 51.102.