State of California
AIR RESOURCES BOARD

OZONE STATE IMPLEMENTATION PLAN FOR IMPERIAL COUNTY

Resolution 17-18

October 26, 2017

Agenda Item No.: 17-10-1

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 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 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 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 Imperial County as nonattainment for the 75 ppb 8-hour ozone standard with a Marginal classification and attainment date of July 20, 2015;

WHEREAS, on March 6, 2015, U.S. EPA finalized a rule to establish SIP requirements for the 75 ppb 8-hour ozone standard (Ozone Rule);

WHEREAS, despite air quality progress, Imperial County did not attain the 75 ppb 8-hour ozone standard by the Marginal attainment date;

WHEREAS, effective June 3, 2016, U.S. EPA classified Imperial County as a Moderate nonattainment area with an attainment date of July 20, 2018;

WHEREAS, the Imperial County Air Pollution Control District (District) is the local air district and planning agency for Imperial County;

WHEREAS, Imperial County is a rural area impacted by transport from the Mexican municipality of Mexicali;

WHEREAS, the Act includes a provision under section 179B that allows states to take into consideration the impacts of transport of pollutants across international borders;

WHEREAS, the Act requires that a Moderate nonattainment area ozone SIP include air quality data, an emission inventory, a modeled attainment demonstration, a reasonably available control technology (RACT) demonstration, a reasonably available control measures (RACM) analysis, a reasonable further progress (RFP) demonstration, contingency measures for RFP, and transportation conformity budgets;

WHEREAS, section 179B of the Act waives the requirement that a nonattainment SIP include a demonstration of attainment if it is shown that the area would have attained the standard but for emissions emanating from outside of the United States;

WHEREAS, the District developed the *Imperial County 2017 State Implementation Plan for the 2008 8-hour Ozone Standard* (Ozone Plan) to meet the Moderate area planning requirements as applicable under section 179B for the 75 ppb 8-hour ozone standard;

WHEREAS, the CARB Staff Report includes a supplemental weight of evidence analysis which was made available for public review at least 30 days prior to the public hearing;

WHEREAS, CARB staff concluded the Ozone Plan, along with the elements included in the CARB Staff Report, meets the requirements of the Act and the Ozone Rule;

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;

WHEREAS, consistent with sections 172(c) and 181(a) of the Act, the Ozone Plan includes an attainment demonstration under section 179B that shows the District would be in attainment but for emissions emanating from Mexico;

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

WHEREAS, consistent with sections 172(c)(2) and 182(b)(1) 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 consistent with sections 172(c)(9) of the Act, as interpreted by previous U.S. EPA guidance;

WHEREAS, CARB 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* and any revised guidance, and to submit a SIP revision to U.S. EPA as appropriate;

WHEREAS, consistent with section 176 of the Act, the Ozone Plan establishes a transportation conformity emission budget for 2017, developed in consultation between the District and the regional transportation agency;

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 Ozone Plan was made available for public review at least 30 days prior to the September 12, 2017, public hearing where the District Board of Directors approved the Ozone Plan;

WHEREAS, to meet its obligations under the California Environmental Quality Act (CEQA), the District determined that the Ozone Plan is exempt from CEQA 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, CARB has determined that its subsequent adoption of the District's Ozone Plan is a "ministerial" approval for purposes of CEQA (California Code of Regulations, title 14, §15268) because CARB's review is limited to determining if the Ozone Plan meets the requirements of the Act, and CARB lacks authority to modify or not approve the Ozone Plan in response to environmental concerns, as described in the CARB Staff Report.

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

1. The Ozone Plan, along with the supplemental weight of evidence analysis in the CARB Staff Report, documents that Imperial County would have attained the 75 ppb 8-hour ozone standard by the attainment deadline but for emissions emanating from Mexico;

2. The Ozone Plan, along with the CARB Staff Report, includes the required air quality data, emission inventory, modeled attainment demonstration as applicable under section 179B, RACT demonstration, RACM analysis, RFP demonstration, contingency measures for RFP, and a transportation conformity budget for 2017;

3. Ongoing implementation of CARB and District control programs would provide the emission reductions needed to reduce 8-hour ozone levels; and

4. CARB's review and adoption of the Ozone Plan submitted by the District for inclusion in the California SIP is a ministerial activity for purposes of CEQA.

BE IT FURTHER RESOLVED that the Board hereby adopts the Ozone Plan and the CARB 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 approved by the District and the supplemental information in the CARB 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 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.

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

I hereby certify that the above is a true and correct copy of Resolution 17-18 as adopted by the Air Resources Board.

Rana McReynolds

Rana McReynolds, Clerk of the Board