

PROPOSED

State of California
AIR RESOURCES BOARD

SOUTH COAST PM2.5 CONTINGENCY MEASURE

Resolution 19-4

February 21, 2018

Agenda Item No.: 19-2-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State 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 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 to perform 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, the South Coast Air Basin (South Coast) includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County;

WHEREAS, the South Coast Air Quality Management District (District) is the local air district with jurisdiction over the South Coast pursuant to sections 40410 and 40413 of the Health and Safety Code;

WHEREAS, on December 14, 2009, United States Environmental Protection Agency (U.S. EPA) designated the South Coast as nonattainment for the $35 \mu\text{g}/\text{m}^3$ 24-hour PM2.5 NAAQS;

WHEREAS, on December 18, 2014, U.S. EPA designated the South Coast as nonattainment for the $12 \mu\text{g}/\text{m}^3$ annual PM2.5 NAAQS with a Moderate classification and an attainment date of December 31, 2021;

WHEREAS, on February 12, 2016, U.S. EPA classified the South Coast as a Serious nonattainment area for the $35 \mu\text{g}/\text{m}^3$ 24-hour PM2.5 NAAQS with an attainment date of December 31, 2019;

WHEREAS, on March 23, 2017, the Board approved the 2016 Air Quality Management Plan (2016 AQMP) that included a demonstration that attainment of the $12 \mu\text{g}/\text{m}^3$ annual PM2.5 NAAQS by the Moderate attainment date of December 31, 2021, is impracticable and requested a Serious classification with an attainment date of December 31, 2025;

WHEREAS, the 2016 AQMP included Serious area planning requirements for the $12 \mu\text{g}/\text{m}^3$ annual and the $35 \mu\text{g}/\text{m}^3$ 24-hour PM2.5 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 meet a reasonable further progress (RFP) milestone or to attain the standard by the applicable attainment date;

WHEREAS, a decision by the U.S. Court of Appeals for the Ninth Circuit in October 2016, *Bahr v. U.S. Environmental Protection Agency* (*Bahr*, 9th Cir. 2016) 836 F.3d 1218, addressed U.S. EPA's Region 9 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 determined 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, on October 25, 2018, CARB adopted a Statewide Contingency Measure as part of the *2018 Updates to the California State Implementation Plan* (2018 SIP Update) specifying new actions California will take if they are triggered by U.S. EPA issuing a finding that one of the covered areas has failed to meet an RFP milestone or failed to meet the standard by the applicable attainment date;

WHEREAS, the Statewide Contingency Measure identifies sufficient State contingency measures for RFP and attainment consistent to with section 172(c)(9) of the Act, as interpreted by *Bahr*;

WHEREAS, the 2016 AQMP relied upon District contingency measures for the PM2.5 standards and thus South Coast PM2.5 was not included in the Statewide Contingency Measure;

WHEREAS, the District and U.S. EPA staff have requested that CARB amend the Statewide Contingency Measure to include the South Coast PM2.5 standards;

WHEREAS, the South Coast PM2.5 Contingency Measure will amend the Statewide Contingency Measure to include the South Coast 12 $\mu\text{g}/\text{m}^3$ annual and 35 $\mu\text{g}/\text{m}^3$ 24-hour PM2.5 standards in the list of area standards covered by the Statewide Contingency Measure;

WHEREAS, the South Coast PM2.5 Contingency Measure amends the Statewide Contingency Measure to provide attainment contingency for South Coast 24-hour PM2.5 in 2019 and South Coast 12 $\mu\text{g}/\text{m}^3$ annual PM2.5 in 2025 and RFP contingency for South Coast 12 $\mu\text{g}/\text{m}^3$ annual PM2.5 in 2019 and 2022;

WHEREAS, since the 2017 RFP milestone has passed and been met, RFP contingency is no longer needed for the 2017 RFP milestone year;

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 South Coast PM2.5 Contingency Measure was made available for public review at least 30 days prior to the CARB public hearing;

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; and

WHEREAS, CARB staff has determined that the proposed South Coast PM2.5 Contingency Measure 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 that the proposed activity may result in a significant adverse impact on the environment, as described in Chapter XI of the 2018 SIP Update.

NOW, THEREFORE, BASED ON THE FOREGOING, BE IT RESOLVED that this South Coast PM2.5 Contingency Measure consists of two complementary elements

that, together with the District's contingency measures, 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 South Coast to provide additional emissions reductions in the event that U.S. EPA determines the area failed to meet an RFP milestone or failed to attain the $35 \mu\text{g}/\text{m}^3$ 24-hour PM2.5, and/or the $12 \mu\text{g}/\text{m}^3$ annual PM2.5 standard, as relevant, by the applicable attainment date; and
2. Demonstration of how additional PM2.5 precursor emissions reductions that are expected to occur due to ongoing State mobile source control programs, together with the emissions reductions from the enhanced enforcement activities contingency measure and District contingency measures and commitments, provide for approximately one year's worth of progress in the relevant years.

BE IT FURTHER RESOLVED that:

1. Within 60 days of a U.S. EPA finding that the South Coast has failed to attain the $35 \mu\text{g}/\text{m}^3$ 24-hour PM2.5, and/or $12 \mu\text{g}/\text{m}^3$ annual PM2.5 standards by the applicable attainment date, the CARB Executive Officer will direct enhanced enforcement activities in the South Coast minimally consisting of:
 - a. A published report describing the enforcement history, inspection locations, and compliance status of stationary and mobile sources in the area (Enhanced Enforcement Report). The report will include a determination of the probable causes of the failure and will state the type and quantity of additional enforcement resources that will be utilized within the failing area along with an explanation of why the type and quantity of enforcement resources allocated (Enhanced Enforcement Program) are appropriate to reduce emissions and health impacts in the failing area.
 - b. Implementation of the Enhanced Enforcement Program documented in the Enhanced Enforcement Report.
 - c. The actions described in the Enhanced Enforcement Program will continue:
 - i. In the case of a failure to attain, until CARB submits a new SIP to U.S. EPA demonstrating attainment of the relevant NAAQS.
 - ii. In the case of a failure to make RFP, for one year from the date the actions in the Enhanced Enforcement Program are initiated.
2. A published final report documenting the actions and emissions and exposure reductions resulting from the implemented Enhanced Enforcement Program.

BE IT FURTHER RESOLVED, the Board finds that:

1. The South Coast PM2.5 Contingency Measure is necessary to resolve approvability issues related to contingency measures;

2. The South Coast PM2.5 Contingency Measure meets the requirements of the Act and U.S. EPA guidance related to contingency measures for RFP and attainment;
3. The South Coast PM2.5 Contingency Measure 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;
4. A given Enhanced Enforcement Report (as described above) may not conclude that no enhanced enforcement action is appropriate; U.S. EPA's finding that the South Coast has failed to meet an RFP milestone or failed to attain must result in some enhanced enforcement action and those actions must begin within 60 days of the finding;
5. A given Enhanced Enforcement Program must include some of the enhanced enforcement actions listed in the "Menu of Enhanced Enforcement Actions" listed in Attachment A, additional actions beyond those listed may also be included, the specific actions chosen for an Enhanced Enforcement Program must be appropriate to address the specific failure, as detailed in the relevant Enhanced Enforcement Report;
6. The enhanced enforcement activities undertaken pursuant to a given Enhanced Enforcement Plan meet the requirements of the Act as interpreted by *Bahr* in that they comprise specific measures that take effect in the future if the South Coast fails to meet the required condition, without further rulemaking action by the State or U.S. EPA Administrator; and
7. The reductions that would result from the enhanced enforcement activities undertaken pursuant to a given Enhanced Enforcement Plan are quantifiable, surplus, enforceable, and permanent within the meaning of U.S. EPA guidance.

BE IT FURTHER RESOLVED that the Board hereby adopts the South Coast PM2.5 Contingency Measure as a revision to the California SIP.

BE IT FURTHER RESOLVED that the Board hereby directs the Executive Officer to submit the South Coast PM2.5 Contingency Measure 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 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 South Coast PM2.5 Contingency Measure was adopted after notice and public hearing as required by Section 110(l) of the Act and 40 CFR section 51.102.

Resolution 19-4

February 21, 2019

Identification of Attachments to Board Resolution 19-4

Attachment A: "Menu of Enhanced Enforcement Activities"

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“Menu of Enhanced Enforcement Activities”

Source Category	Actions
Commercial truck and bus fleets	<ul style="list-style-type: none"> • Using existing and future data sources and equipment, including CARB’s Portable Emissions AcQuisition System¹ and technologies developed to support U.S. EPA’s Next Generation Compliance strategy, identify fleet owners/operators of high-emitting vehicles and equipment operating within the South Coast that contribute to the failure(s) • Conduct additional inspections of vehicles and equipment operating with the South Coast • Conduct additional audits of fleets operating in the South Coast • Conduct additional inspections and investigations to ensure vehicles do not include undisclosed auxiliary emissions control devices or other uncertified/illegal aftermarket emissions equipment • Issue citations and notices of violations as warranted
Off-road construction and mining equipment; Cargo-handling equipment	<ul style="list-style-type: none"> • Using existing and future data sources and equipment, including remote sensing technologies developed to support U.S. EPA’s Next Generation Compliance strategy, identify fleet owners/operators of high-emitting vehicles and equipment operating within the South Coast that contribute to the failure(s) • Conduct additional inspections of equipment operating with the South Coast • Conduct additional audits of fleets operating in the South Coast • Issue citations and notices of violations as warranted
Passenger vehicles; Aftermarket parts	<ul style="list-style-type: none"> • Use new and existing data sources and advanced technologies to identify high-emitting vehicles operated within the South Coast for investigation • Conduct additional investigations of high-emitting vehicles to determine if new vehicles are being sold for use in California using undisclosed auxiliary emissions control devices or other uncertified/illegal emissions parts • Conduct additional investigations of manufacturers, retailers and installers of aftermarket “defeat devices” • Issue citations and notices of violations as warranted
Vehicle and equipment fuels;	<ul style="list-style-type: none"> • Conduct additional investigations to ensure vehicle and equipment fuels meet applicable standards • Issue citations and notices of violations as warranted

¹ https://www.arb.ca.gov/enf/policy2017/final_enforcement_policy_october2017.pdf

Source Category	Actions
Small off-road engines	<ul style="list-style-type: none"> • Conduct additional investigations of products sold for use within the South Coast • Issue citations and notices of violations as warranted
Off-road recreational vehicles, recreational boats and personal watercraft	<ul style="list-style-type: none"> • Conduct additional investigations of consumer products sold for use within the South Coast • Issue citations and notices of violations as warranted
Marine vessels; Marine fuels	<ul style="list-style-type: none"> • Conduct additional inspections of marine vessels to ensure vessels are adhering to applicable fuel, auxiliary engine and shorepower requirements • Conduct additional investigations to ensure marine fuels used meet applicable standards • Issue citations and notices of violations as warranted
Consumer products	<ul style="list-style-type: none"> • Conduct additional investigations of consumer products sold for use within the South Coast • Issue citations and notices of violations as warranted