



COMITÉ CÍVICO DEL VALLE

INFORMED PEOPLE BUILD HEALTHY COMMUNITIES

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November 25, 2014

Via E-Mail

BradPoiriez@co.imperial.ca.us

Brad Poiriez, Air Pollution Control Officer
Imperial County Air Pollution Control District
150 S. 9th Street
El Centro, CA 92243

Re: **Comments on Imperial County 2013 24-Hour PM2.5 Plan**
Imperial County Hearing Date 12/2/2014
CARB Hearing Date 12/18/2014

Dear Mr. Poiriez:

Comité Civico del Valle, Inc. (“**Comité or Commentor**”) respectfully writes to provide comments on the Imperial County 2013 24-Hour PM2.5 State Implementation Plan (“**Plan**” or “**SIP**”).

Comité is a California non-profit organization based in Brawley, California with the mission “to improve access to healthcare, information, and prevention programs to low-income, underrepresented, and underserved community members in Imperial County by way of education, capacity building, and civic participation.” It actively works for its members and the community at-large on many public health and environmental justice issues in Imperial and Riverside Counties, and hosts the annual Imperial County Environmental Health Leadership Summit.

Comité has been working on Imperial County’s SIP and advocating for improved fugitive dust Rules for a long time. In 2009, we filed a lawsuit, *Comité Civico Del Valle, Inc. v. Jackson*, Case No. 09-cv-04095 PJH (N.D. Cal.), that in 2010 put USEPA on a “deadline” to take action on the County’s SIP Regulation VIII for fugitive dust.

Comité is very concerned about the health effects of air quality and particulate matter pollution in Imperial County. The California Department of Public Health has found that Imperial County has the highest rate of childhood asthma hospitalizations in the State, registering nearly three times the state average. *See* <http://articles.latimes.com/2012/jul/16/local/la-me-imperial-county-asthma-20120716>.

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In 2014, the “California County Health Rankings,” ranked the County 55th of 57 California counties on overall health factors including environmental quality. See http://www.countyhealthrankings.org/sites/default/files/state/downloads/CHR2014_CA_v2.pdf

Specifically, Comité respectfully writes to explain: 1) the need for a PM2.5 monitor near the Salton Sea and 2) serious concerns about the Plan’s conclusions that Imperial’s Rules 701 and 800-806 to control PM2.5 from agricultural burning, open areas, unpaved roads and agriculture operation sources constitute that the required reasonable available control measures (“**RACM**”) and reasonable available control technologies (“**RACT**”) under the Clean Air Act and whether these Rules, and the enforcement thereof, can be improved.

We have prepared these comments with the technical support of air modeling expert Paul Rosenfeld, Ph.D – his comments are attached for the record as Exhibit A hereto.

Background

On June 2, 2014 USEPA classified all PM2.5 nonattainment areas for the 2006 NAAQS according to Subpart 4 of Clean Air Act (“**CAA**”) Section 188(a) which provides that all areas designated nonattainment such as Imperial County are initially classified “by operation of law” as “moderate.” “Moderate” nonattainment areas must demonstrate attainment as expeditiously as practicable but no later than the end of the sixth calendar year after designation (CAA §188(c)(1)).

Section 189[a](1)(C) along with Section 172(c)(1) of the CAA requires areas classified as “moderate” nonattainment to provide for the implementation of RACM and RACT for existing sources within the nonattainment area. Moreover, as the Plan confirms, a “but for” SIP such as this one for the Imperial Planning Area must continue to meet all applicable “moderate” area SIP requirements, including the implementation of RACM/RACT. Essentially, RACM/RACT is the collection of reasonable emission reductions that collectively advance attainment of an air quality standard. A “but for” SIP must demonstrate that the emissions of the collective existing control measures are sufficient to maintain attainment “but for” emissions from an international source.

The PM2.5 emissions inventory by source category in the Plan shows that the majority of PM2.5 emissions in Imperial County’s non-attainment area are produced by unpaved roads, farming operations, fugitive windblown dust and burning of agricultural waste. Based on the 2008 PM2.5 emissions inventory, emission inventory source categories deemed significant requiring a RACM/RACT analysis include unpaved road dust, fugitive windblown dust, farming operations (tilling) and managed burning and disposal.

A PM2.5 Monitor Is Needed At Niland Closer To The Salton Sea

We understand that on October 24, 2014, USEPA in the letter attached hereto as Exhibit B approved Imperial County's monitoring network plan under 40 CFR Part 58¹ with an extensive list of reservations and concerns. On an 80 item checklist, the USEPA found 13 items in the monitoring network plan needed to be updated in future monitoring plans and 21 items did not contain sufficient information to make a determination. We too have reservations, and the County's attainment conclusions are only as good as the accuracy of its monitoring data.

As set forth in the letter attached hereto as Exhibit A, Dr. Rosenfeld concludes that the PM2.5 monitoring network in Imperial County is insufficient to determine if the County, particularly near the Salton Sea, is in attainment. He notes that there is a monitoring station north of Brawley in Niland, however it does not measure PM2.5. Without this station, he concludes that the air quality is not categorized well spatially. This station is especially important due to its proximity to the Salton Sea.

The nearest PM2.5 monitoring stations to the Salton Sea are roughly 12 miles to the southeast in Brawley and 16 miles to the northwest in Indio. There is a monitoring station to the southeast of Niland which is only 3 miles east of the Salton Sea. Adding a PM2.5 monitor at the Niland location would improve the monitoring network to more accurately characterize the air quality in Imperial County. It is difficult to claim the Imperial Valley is in attainment without a PM2.5 monitoring station near the Salton Sea. Please consider whether this additional monitoring station is required under 40 CFR Section 58.11 and Appendix D to Part 58.

¹ 40 CFR Part 58 Appendix D provides that:

"1.1.1 In order to support the air quality management work indicated in the three basic air monitoring objectives, a network must be designed with a variety of types of monitoring sites. Monitoring sites must be capable of informing managers about many things including the peak air pollution levels, typical levels in populated areas, air pollution transported into and outside of a city or region, and air pollution levels near specific sources. To summarize some of these sites, here is a listing of six general site types:

- (a) Sites located to determine the highest concentrations expected to occur in the area covered by the network.
- (b) Sites located to measure typical concentrations in areas of high population density.
- (c) Sites located to determine the impact of significant sources or source categories on air quality.
- (d) Sites located to determine general background concentration levels.
- (e) Sites located to determine the extent of regional pollutant transport among populated areas; and in support of secondary standards.
- (f) Sites located to measure air pollution impacts on visibility, vegetation damage, or other welfare-based impacts."

Comité Is Not Convinced That Imperial's PM2.5 Rules Are RACM/RACT

The Plan concludes that Imperial's existing fugitive dust and PM2.5 control Rules 701 and 801-806 are RACM/RACT, but Comité respectfully is not convinced.

The identification of potential RACM/RACT for a significant source category in Imperial County necessarily involves a consideration of control measures adopted and/or implemented in other geographical areas for the same and similar source categories. Thus, measures in other air districts can be considered RACM/RACT for Imperial. CAA § 7513(e); *Vigil v. Leavitt*, 381 F.3d 826, 834 (9th Cir. 2004); *Hall v. United States Environmental Protection Agency*; 273 F.3d 1146 (9th Cir. 2001).

In addition, RACM/RACT might itself change over time from a more limited set of measures at initial implementation to a progressively tighter or more ambitious program at later dates. *See* 67 Fed. Reg. 59456 (Sept. 23, 2002) (EPA rejected submitted SIP revision that included previously approved opacity rule because EPA found rule no longer met RACM). What was RACM/RACT in the past is not determinative of what is RACM/RACT in 2014 and beyond.

With regard to fugitive dust and PM2.5, other air district measures that must be reviewed include but are not limited to: San Joaquin, California Rules 4103, 4505, 8011, 8061 and 8081; South Coast, California Rules 403 and 403.1 and 444 and its Coachella Valley Agriculture Handbook; Bay Area, California Rules 5-111 to 5-606; Sacramento, California Rule 305; Great Basin, California Rule 502; Arizona State/Maricopa Rules 18-2-609 to 611 and Agricultural BMP Committee Report; Maricopa County, Arizona Rules 310 and 310.1; and Clark County, Nevada Rule 91. The Plan concludes that Imperial County's Rules 701 and 801-806 are as strict or stricter than some of these rules, but please consider the following:

i. Rule 701

The Plan concedes that agricultural burning is a significant source, but concludes that Rule 701, only three pages long and unchanged since 2002, is RACM/RACT. Comité respectfully remains unconvinced. Our members continually come to us raising agricultural burning as a concern.

Rule 701A.14 indicates that the Air Pollution Control Officer will tightly oversee agricultural burning near sensitive receptors. We respectfully do not believe this to be the case, and two photographs taken October 24, 2014 at Ben Hulse Elementary School in Imperial, California and one photograph taken on March 22, 2011 at Enrique Camarena Jr. High School in Calexico, California explain why:



We are further concerned that Rule 701 does not include mandatory requirements to reduce the need for burning and evaluate alternatives to burning, as required by San Joaquin Rule 4103-5.5.3, South Coast Rule 444d(9) (C)(v). Burning should be a last resort (*see* Bay Area Rule 403 allowing burning if it is “only safe method of disposal”), but Rule 701 does not make this clear. Please also see the following document created by the State of Washington that provides RACM/RACT guidance on how to reduce the need for agricultural burning:
http://www.ecy.wa.gov/programs/air/aginfo/research_pdf_files/AlternativesAgBurn.pdf.

Also, Rule 701 should be clear that certain materials are not appropriate for burning such as: packaging and box materials (Sacramento Rule 305.7, San Joaquin Rule 4103-5.5.7), burning for weed abatement (San Joaquin Rule 4103-5.5.1) and burning for conversion to non-agricultural purposes (San Joaquin Rule 4103-6.1.5, Bay Area Rule 5-403). Further, Bay Area Rule 5-111 requires a minimum 60 days drying time for all material, a crackle test in Rule 5-601 and its Rule 5-501 requires far more rigorous record retention for burn events than Imperial’s Rule 701. So too, South Coast Rule 444e contains prescriptions on the total amount of acreage to burn each day, an “Annual Post Burn Evaluation Report” in Rule 444f and its Rule 444d(8) requires longer drying times for prunings than does Imperial’s Rule 701.

Imperial’s Plan should evaluate all these other rules in comparison to twelve-year old Rule 701 agricultural burning for RACT/RACM compliance.

ii. Rule 800

Rule 800 primarily regulates public lands within Imperial County used by Recreational Off Highway Vehicles (“OHV”).

Rule 800 does not meet RACM/RACT requirements because it does not cover OHV Use Areas on private lands. Rule 800 F.5 states that “THE BLM, DPR, or any other owner or operator of a Recreational OHV Use Area *on public lands* shall prepare a dust control plan to minimize PM-10 emissions.” (emphasis added).

Both Arizona Revised Statute § 49–457.03 and Clark County Air Quality Regulations § 90 require owners and operators on both public *and* private lands of recreational OHV use areas to adopt control measures and submit dust control plans. Section 90 of Clark County Air Quality Regulations requires that: “Any OWNER AND/OR OPERATOR of OPEN AREAS AND VACANT LOTS having a cumulative area of 10,000 acres or greater must submit a dust mitigation plan.” Moreover, Clark County Air Quality Regulations Section 90 requires that all “OPEN AREAS AND VACANT LOTS . . . 5,000 square feet or larger and are disturbed by any means, including use by . . . OFF-ROAD MOTOR VEHICLES” impose a specified set of control measures. (emphasis added.)

Also, Comité believes that enforcement is important. Rule 800H requires a “Record of Control Implementation.” Has the Air Pollution Control Officer regularly audited and reviewed these documents? Comité is hopeful that that the Air Pollution Control Officer has a robust regulatory presence, *in the field*, to ensure compliance with Rule 800.

iii. Rule 803

Rule 803 regulates PM emissions generated by motorized vehicles tracking out or carrying out bulk materials from off-road surfaces onto paved surfaces.

Rule 803 may not satisfy RACM/RACT requirements because it exempts Agricultural Operations Sites from its regulations. Rule 803.D.1. While Rule 803 expressly exempts Agricultural Operation Sites from track out/carry out regulations, other districts, such as San Joaquin require that agricultural operations meet conservation management practices requirements in addition to general requirements that apply to all other roads.

iv. Rule 804

Rule 804 regulates PM emissions generated by disturbed surfaces left in open areas. Rule 804 may not meet BACM requirements because it imposes minimal controls on open lots larger than 0.5 acres in urban areas and 3 acres in rural areas with disturbed surfaces with no regard as to what kind of activities, beyond recreational OHV activity, are occurring. In contrast, for example, SCAQMD Rule 403 imposes regulations on lots of any size with disturbed surface area, as well as additional control, permitting, and reporting requirements on construction activity, large operations, and confined animal facilities.

v. Rule 805

Rule 805 regulates PM emissions generated by “public or private Paved or Unpaved Road, road construction project[s], or road modification project[s]” We are concerned that Rule 805 does not meet BACM requirements because it exempts Agricultural Operation Sites, regulating them under less stringent requirements under Rule 806. Rule 805.D.2. The exemption for agricultural operations flies directly in the face of USEPA earlier recommendations which stated that “ICAPCD must remove the exemption in Rule 805 Section D.2 or demonstrate how BACM is met in Imperial County for farm roads and traffic areas that are subject to less stringent requirements than other roads and traffic areas in the County and farm roads and traffic areas in other areas.” 75 Fed. Reg. 8008, 8011 (Feb. 23, 2010). Other districts do not exempt farm roads, subjecting them to the same regulations as roads primarily used for non-agricultural purposes. *Id.* (EPA noted that “SJVAPCD requires that CMPs be implemented to meet opacity and stabilization requirements at the following thresholds: Unpaved farm roads with ≥ 75 VDT or ≥ 25 average daily vehicle trips by three or more axle vehicles; unpaved traffic areas with ≥ 50 average daily vehicle trips (on an annual basis) or ≥ 25 average daily vehicle trips (on an annual basis) by three or more axle vehicles.”).

Moreover, Comité is extremely interested in enforcement, compliance and of Rule 805’s compliance deadlines of 2015 for roads to begin meeting the regulations. Rule 805.E.7 requires that Imperial County’s compliance plans state that 100% of roads in Imperial County will comply with Rule 805 by 2015. Has this occurred? *What are the facts in the field?* The Plan should address this.

Finally, Rule 805 fails to impose sufficiently stringent control measures to meet the BACM standard. Rule 805.E. only imposes control measures upon unpaved roads, canal roads, unpaved traffic areas, and paved roads. SCAQMD Rule 403, on the other hand, not only imposes regulations based upon the type of road, but also requires additional measures if the road is being used for construction activity or large operations.

vi. Rule 806

Comité continues to have concerns about Rule 806, which regulates emissions “generated by Agricultural Operation Sites.”

While improved from past iterations, Rule 806 does not meet RACM/RACT requirements because it is rendered unenforceable by lack of an application, submittal and review process. Rather than impose an application, submittal and review process, Rule 806 merely requires that parties subject to Rule 806 maintain “a copy of the CMP plan and any supporting documentation necessary to confirm implementation” BACM *requires* that Imperial Rule 806 maintain an application submittal and review process, as, for example, is contained in San Joaquin Rule 4550, Great Basin Unified Air Pollution Control District Rule 502, and SJVAPCD Rule 4550. This review process was

cited in *Latino Issues Forum v. EPA*, 558 F.3d 936, 944-5 (9th Cir. 2009) as BACM. The APCD must trust, but also *verify*.

Rule 806 also is silent on confined animal feeding operations, and Rules 217 and 420 do not adequately address PM_{2.5} emissions from such feedlots. To the contrary, SCQMD Rule 403d.6 and accompanying Table 4 have a host of *required* control measures from feedlots to reduce particulate emissions. Our members consistently come to us with complaints about dust from feedlots, and we respectfully feel the County can do better on regulating feedlot sources.

EPA similarly noted the lack of enforceability of Rule 806 stating that the APCD “must revise Rule 806 to ensure that tilling and harvesting CMPs are enforceable and are implemented at a BACM level” 75 Fed. Reg. 8008, 8011 (Feb. 23, 2010).

Moreover, Rule 806 is limited in applicability, applying only to Agricultural Operation sites over 40 acres. Rule 806.D.1. However, South Coast and Maricopa Rules require CMPs for farms over 10 acres.

Rule 806 imposes insufficient controls on unpaved farm roads. Rule 806 D.2 and E.3 sets CMPs for Unpaved Roads on Agricultural sites, while unpaved farm roads are exempted from additional requirements applicable to other roads primarily used for non-agricultural uses by Rule 805.D.2 and Rule 803.D. Other districts impose heightened controls on agricultural farm roads, for example San Joaquin requires farm roads to meet control measures required for agricultural operations in addition to general requirements that apply to all other roads.

Finally, the windblown dust controls in Rule 806 may not be RACM/RACT. South Coast Rule 403’s Agricultural Handbook requires growers to cease certain soil preparation and maintenance activities when winds exceed 25 miles per hour, implement one of four specific practices to reduce windblown dust from actively disturbed fields, and implement three of nine specific practices to reduce windblown dust from inactive (fallow) fields. Active conservation options include soil moisture monitoring (ensuring soil moisture to prevent visible dust emissions from extending more than 100 ft.), irrigation systems (irrigating or bedding fields as soon as feasible after land leveling), minimum tillage and mulching. The inactive conservation options include cover crop, crop residue management, surface roughening, minimum tillage, cross wind strip crossing, field windbreaks, ridges and wind barriers. For more guidance on RACT/RACM for agricultural PM reduction see this newer USDA publication: http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1049502.pdf

Conclusion

Comité’s mission is to improve transparency and environmental outcomes in Imperial County. It wants to see Imperial County working constructively with air quality regulators including USEPA, and commits to working with the County in a respectful way to improve air quality and public health.

To that end, Comité appreciates the ability to submit these comments, and respectfully requests that the County in its Plan consider: 1) the need for a PM2.5 monitor near the Salton Sea and 2) whether its Rules 701 and 800-806 to control PM2.5 from agricultural burning, open areas, unpaved roads and other agricultural sources constitute the required RACM/RACT under the Clean Air Act and whether these Rules, and the enforcement thereof, can be improved.

Thank you for considering our comments. Please include these comments in the materials for all Plan approval hearings, put us on the mailing list and recognize our interest in participating as a stakeholder throughout this process.

Sincerely,



Luis Olmedo

Executive Director, Comité Civico del Valle, Inc.

Attachs. A and B

Cc (via e-mail):

Imperial County Supervisor John Renison, Chairman of the Board

U.S. Congressman Juan Vargas, 51st District

U.S. Congressman Raul Ruiz, 36th District

Jared Blumenfeld, USEPA Region IX Administrator

Deborah Jordan, USEPA Region IX Associate Air Division Director

Amy Zimpfer, USEPA Region IX Associate Air Division Director

Andy Steckel, USEPA Region IX Rules Chief Air Division

Mary Nichols, CARB Board Chair @ <http://www.arb.ca.gov/lispub/comm/bclist.php>

Richard Corey, CARB Executive Officer

Lynn Terry, CARB Deputy Executive officer