State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER S-09-005

Relating to Approval of Amendments to the 2007 Ozone Plan for the San Joaquin Valley to Achieve Pesticide Emission Reductions

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 the preparation of the State Implementation Plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS) 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, sections 39515 and 39516 of the Health and Safety Code delegate to the Executive Officer the authority to act for the Board in this matter;

WHEREAS, the Department of Pesticide Regulation (DPR) has primary responsibility for the control of air pollution from agricultural and commercial/structural pesticide usage;

WHEREAS, DPR has an existing commitment to reduce agricultural and commercial/structural pesticide volatile organic compound (VOC) emissions in the San Joaquin Valley by 12 percent from 1990 levels, as established in the California's 1994 Ozone SIP for the San Joaquin Valley;

WHEREAS, on November 16, 2007, ARB submitted to the U.S. Environmental Protection Agency (U.S. EPA) the State Strategy for California's 2007 State Implementation Plans (2007 State Strategy), including a commitment by DPR to reduce pesticide VOC emissions in the San Joaquin Valley;

WHEREAS, U.S. EPA has not yet acted on the pesticide emission reduction commitment in the 2007 State Strategy submitted to U.S. EPA on November 16, 2007;

WHEREAS, on April 17, 2009, DPR adopted Amendments to its 2007 State Strategy commitment to reduce agricultural and commercial/structural pesticide VOC emissions in the San Joaquin Valley (Amended Commitment);

WHEREAS, through the Amended Commitment, DPR is establishing the pesticide VOC emissions estimation methodology to evaluate compliance with DPR's commitment to reduce pesticide VOC emissions in the San Joaquin Valley;

WHEREAS, through the Amended Commitment, DPR is committing to implement restrictions on agricultural fumigation methods and to implement restrictions on VOC emissions from non-fumigant pesticides;

WHEREAS, through the Amended Commitment, DPR is committing to manage VOC emissions from commercial structural and agricultural pesticide use, to ensure that those emissions do not exceed 18.1 tons per day in the San Joaquin Valley; this is equivalent to a 12 percent reduction of pesticide VOC emissions from 1990 levels;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts, unless specific overriding considerations are identified which outweigh the potential adverse consequences of any unmitigated impacts;

WHEREAS, prior to adopting the Amended Commitment, DPR identified potentially significant adverse environmental impacts that can reasonably be expected to occur from the implementation of the Amended Commitment;

WHEREAS, DPR's Amended Commitment could result in up to 2.3 tons per day more pesticide VOC emissions in the San Joaquin Valley as compared to the pesticide VOC emission reduction commitment originally included in the 2007 State Strategy, when using the emissions estimation methodology established by the Amended Commitment;

WHEREAS, DPR has identified overriding considerations that support the exercise of DPR's discretion to adopt the Amended Commitment;

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 notice and opportunity for public review,

must be conducted prior to the adoption and submittal to U.S. EPA of any SIP revision;

WHEREAS, DPR made the Amended Commitment available for public review and comment for at least 30 days, and DPR conducted noticed public hearings in Bakersfield and Sacramento, California, prior to it's adoption of the Amended Commitment, as required by the Act and U.S. EPA regulations;

WHEREAS, on October 5, 2009, DPR transmitted the Amended commitment to ARB for inclusion in California's SIP;

WHEREAS, the Executive Officer finds that:

1. The emission reduction measures included in the 2007 Ozone Plan for the San Joaquin Valley would, in total, result in slightly more VOC emission reductions than are necessary to demonstrate attainment of federal 8-hour ozone standard

2. After accounting for the potential increase in pesticide VOC emissions that could occur as a result of DPR's Amended Commitment, the 2007 Ozone Plan for the San Joaquin Valley continues to demonstrate attainment of the federal 8-hour ozone standard;

3. After accounting for the increased pesticide VOC emissions that could occur as a result of DPR's Amended Commitment, the 2007 Ozone Plan for the San Joaquin Valley continues to meet the Reasonable Further Progress requirements of the Act;

4. DPR has met the requirements of CEQA with respect to this SIP submittal.

NOW, THEREFORE, IT IS ORDERED, that the Executive Officer hereby withdraws as a SIP revision the Pesticide Emission Reduction Commitment included in the State Strategy for California's 2007 State Implementation Plans submitted to U.S. EPA on November 16, 2007.

BE IT FURTHER ORDERED, that the Executive Officer hereby adopts and submits to U.S. EPA as a SIP revision DPR's Proposed SIP Commitment to reduce agricultural and commercial/structural pesticide VOC emissions in the San Joaquin Valley.

BE IT FURTHER ORDERED, that ARB certifies, pursuant to 40 CFR 51.102, that the Amended Commitment being submitted as a SIP revision was adopted after notice and public hearing as required by 40 CFR 51.102.

Executed at Sacramento, California this 12 day of Oct, 2009.

James N. Goldstene
Executive Officer

PTSD#7562

PTSD\BRANCH\AQTPB\ X:\2007-2008 SIPs\Pesticide Element\DPR Revised Pesticide Commitment\ARB-EPA Transmittal Documents\SIP Amendment\DRAFT Pesticide SIP Amendment Executive Order.doc