State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER S-09-006

Adoption and Submittal of the
2009 Reasonably Available Control Technology State Implementation Plan
for the San Joaquin Valley

WHEREAS, the California 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 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, Health and Safety Code section 39602 also provides that the SIP shall include only those provisions necessary to meet the requirements of the Act;

WHEREAS, ARB has primary responsibility for the control of air pollution from vehicular sources, including motor vehicle fuels, as specified in Health and Safety Code sections 39002, 39500, and part 5 (commencing with section 43000), and for ensuring that the districts meet their responsibilities under the Act pursuant to Health and Safety Code sections 39002, 39500, 39602, 40469, and 41650;

WHEREAS, districts have primary responsibility for the control of air pollution from nonvehicular sources and for adopting control measures, rules, and regulations to attain the NAAQS within their boundaries pursuant to Health and Safety Code sections 39002, 40000, 40001, 40701, 40702, and 41650;

WHEREAS, the San Joaquin Valley Air Pollution Control District (District) was established as a unified air pollution control district to be responsible for carrying out these activities in the San Joaquin Valley Air Basin;

WHEREAS, the San Joaquin Valley Air Basin includes Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare, and western Kern Counties;

WHEREAS, Health and Safety Code section 41650 requires ARB to approve the nonattainment plan approved by a district as part of California's SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, Health and Safety Code sections 39515 and 39516 delegate to the Board's Executive Officer the authority to act on behalf of the Board in this matter;

WHEREAS, the San Joaquin Valley was classified as an "Extreme" nonattainment area for the now-revoked federal 1-hour ozone standard;

WHEREAS, on October 8, 2004, the District adopted the 2004 Extreme Ozone Attainment Plan for the San Joaquin Valley (2004 Ozone Plan) that included an assessment of the District's implementation of reasonably available control technology (RACT) to meet the requirements of the Act at that time;

WHEREAS, on August 27, 2008, the District, in consultation with U.S. EPA, requested that ARB withdraw the RACT elements in the 2004 Plan and committed to revise the 2006 8-Hour Ozone Reasonably Available Control Technology – State Implementation Plan (2006 RACT SIP) to fully demonstrate that the District's control program implemented RACT levels of emission control for an "Extreme" nonattainment area;

WHEREAS, on September 5, 2008, ARB withdrew the RACT elements of the 2004 Plan, thereby removing it from U.S. EPA's review and approval process;

WHEREAS, on January 21, 2009, U.S. EPA found that California failed to submit the RACT analysis required for 1-hour ozone nonattainment areas;

WHEREAS, the U.S. EPA finding of "Failure to Submit" triggered two "sanction clocks" – an 18-month sanction clock that would impose additional emission mitigation requirements on new and modifying major sources and a 24-month sanction clock that would restrict use of federal highway funds within the San Joaquin Valley;

WHEREAS, the RACT demonstration requirements for areas designated as nonattainment of the federal 8-hour ozone standard are more robust than the requirements for areas designated as nonattainment of the now-revoked federal 1-hour ozone standard;

WHEREAS, the U.S. EPA designated the San Joaquin Valley Air Basin as nonattainment for the 8-hour ozone standard with an initial classification of "Serious";

WHEREAS, on August 27, 2006, the District adopted the 2006 RACT SIP, which documented that the District rules implemented RACT levels of control on all major sources as defined for a "Serious" nonattainment area;

WHEREAS, on April 30, 2007, the District adopted the 2007 Ozone Plan to attain the federal 1997 8-hour ozone standard and concurrently requested a voluntary reclassification to "Extreme" nonattainment status;

WHEREAS, upon U.S. EPA reclassification from "Serious" to "Extreme" under the federal 8-hour ozone standard, the District would be required to revise the 2006 RACT SIP to demonstrate RACT levels of control on all major sources as defined for an "Extreme" nonattainment area;

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

WHEREAS, following a duly noticed public hearing on April 16, 2009, the District adopted the 2009 Reasonably Available Control Technology Demonstration for Ozone State Implementation Plans (2009 RACT SIP), which demonstrates that the District's emission control program fully implements RACT-level controls on RACT for all federal control technique guideline (CTG) categories and all major, non-CTG sources for both the now-revoked federal 1-hour ozone standard and the applicable federal 8-hour ozone standard;

WHEREAS, submittal of the 2009 RACT SIP would fulfill the planning requirements for an area classified as "Extreme" nonattainment for the 1997 federal 8-hour ozone standard;

WHEREAS, U.S. EPA approval of the 2009 RACT SIP would fulfill the planning requirements for an area classified as "Extreme" nonattainment of the now-revoked federal 1-hour ozone standard and would terminate the applicable sanction clocks in the San Joaquin Valley;

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, the District determined that the adoption of the 2009 RACT SIP is not a project as described in CEQA and therefore does not need to undergo CEQA analysis;

WHEREAS, the Executive Officer has considered the District's CEQA analysis and concurs with its determinations;

NOW, THEREFORE, IT IS ORDERED that the Executive Officer hereby adopts as a SIP revision the 2009 RACT SIP adopted by the District.

BE IT FURTHER ORDERED that ARB hereby submits to U.S. EPA the 2009 RACT SIP for the San Joaquin Valley Nonattainment Area and requests that U.S. EPA approve it as a revision to the California SIP.

BE IT FURTHER ORDERED, that ARB certifies, pursuant to 40 CFR 51.102, that the 2009 RACT SIP for the San Joaquin Valley Nonattainment Area 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 18th day of June, 2009.

James N. Goldstene
Executive Officer