State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER S-09-011

Relating to Approval of Regulations to Achieve Pesticide Volatile Organic Compound 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 gas (VOC) emissions in the South Coast, San Joaquin Valley, Ventura County, Southeast Desert, and Sacramento Metropolitan federal ozone nonattainment areas (NAAs);

WHEREAS, on January 25, 2008, DPR adopted revisions (VOC-1) to Title 3, California Code of Regulations (Title 3, CCR) that established restrictions on applicable fumigation methods and implemented field fumigation limits and allowances in the South Coast, San Joaquin Valley, Ventura County, Southeast Desert, and Sacramento Metropolitan NAAs;

WHEREAS, on January 28, 2008, ARB submitted VOC-1 to U.S. Environmental Protection Agency (U.S. EPA) for inclusion in California's SIP;

WHEREAS, U.S. EPA has not yet acted to approve VOC-1 as a revision to California's SIP;

WHEREAS, on September 3, 2008, DPR adopted revisions to Title 3, CCR section 6452.2 (VOC-2) that allowed for phase-in of the fumigant pesticide VOC emission allocation system applicable in the Ventura County NAA;

WHEREAS, on April 20, 2009, DPR adopted revisions to Title 3, CCR section 6452.2 (VOC-3) to recalculate the VOC emission benchmarks applicable in each of the five applicable NAAs;

WHEREAS, on October 5, 2009, DPR requested that ARB submit to U.S. EPA, as a replacement for the regulations submitted on January 28, 2008, specific sections of DPR's fumigant pesticide VOC emission control regulations, including and limited to:

1. Title 3, CCR sections 6447 (first paragraph only) and 6447.3–6452 pertaining to field fumigation methods.

2. Title 3, CCR sections 6452.1 and 6452.4 and sections 6624–6626 pertaining to the emission inventory.

1. Portions of Title 3, CCR sections 6452.2 and 6452.3 pertaining to field fumigation limits and allowances as applicable only to the Ventura County ozone nonattainment area. The portions of Title 3, CCR sections 6452.2 and 6452.3 that apply to the other nonattainment areas are not being adopted as a SIP revision or submitted to U.S. EPA.

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, DPR identified potentially significant adverse environmental

impacts associated with the adoption of VOC-2 in the Ventura County NAA that would delay the full implementation of the fumigant pesticide VOC allocation system in Ventura County and identified overriding considerations that support the exercise of DPR's discretion to adopt VOC-2;

WHEREAS, DPR identified potentially significant adverse environmental impacts associated with the adoption of VOC-3 in the Ventura County and San Joaquin Valley NAAs and identified overriding considerations that support the exercise of DPR's discretion to adopt VOC-3;

WHEREAS, DPR has not requested that ARB adopt or submit as a SIP revision Title 3, CCR section 6452.2 for any federal nonattainment area other than the Ventura County NAA;

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 initial fumigant pesticide VOC emission control regulatory language and the revised regulatory language available for public review and comment for at least 30 days, and DPR conducted noticed public hearings in Ontario, Parlier, Ventura, Bakersfield and Sacramento, California, prior to it's adoption of and/or revisions to the fumigant pesticide VOC emission control regulations, as required by the Act and U.S. EPA regulations;

WHEREAS, the Executive Officer finds that:

1. The fumigant pesticide VOC emission control regulations will restrict fumigant pesticide VOC emissions and will strengthen California's SIP;

2. DPR has met the requirements of CEQA with respect to the development and adoption of DPR's regulations that ARB is adopting as a SIP revision.

NOW, THEREFORE, IT IS ORDERED, that the Executive Officer hereby withdraws as a SIP revision the January 28, 2008 submittal to U.S. EPA of DPR's fumigant pesticide VOC emission control regulations.

BE IT FURTHER ORDERD, that the Executive Officer hereby adopts and submits to U.S. EPA as a SIP revision the following sections of the DPR's final fumigant pesticide VOC emission control regulations:

2. Title 3, CCR sections 6447 (first paragraph only) and 6447.3–6452 pertaining to field fumigation methods.

3. Title 3, CCR sections 6452.1 and 6452.4 and sections 6624–6626 pertaining to the emission inventory.

4. Portions of Title 3, CCR sections 6452.2 and 6452.3 pertaining to field fumigation limits and allowances as applicable only to the Ventura County ozone nonattainment area. The portions of Title 3, CCR sections 6452.2 and 6452.3 that apply to the other nonattainment areas are not being adopted as a SIP revision or submitted to U.S. EPA.

BE IT FURTHER ORDERED, that ARB certifies, pursuant to 40 CFR 51.102, that the fumigant pesticide VOC emission control regulations being submitted as a SIP revision were adopted after notice and public hearing as required by 40 CFR 51.102.

Executed at Sacramento, California this 13 day of OCT, 2009.

James N. Goldstene
Executive Officer

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PTSD#7563

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