Attachment IV

State of California
AIR RESOURCES BOARD

Resolution 07-15

May 24, 2007

Agenda Item No.: 07-5-2

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated the State Air Resources Board (ARB) as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, the 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, sections 39602 and 40460 of the Health and Safety Code also provide that the SIP shall include only those provisions necessary to meet the requirements of the Act;

WHEREAS, sections 41650 and 40469 of the Health and Safety Code require the ARB 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, the ARB has responsibility for ensuring that the districts meet their responsibilities under the Act pursuant to sections 39002, 39500, 39602, 40469, and 41650 of the Health and Safety Code;

WHEREAS, the local air 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 sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, the ARB is authorized by Health and Safety Code section 39600 to do 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 duty may be delegated to the Board's Executive Officer as the Board deems appropriate;

WHEREAS, in July 1997 the U.S. Environmental Protection Agency (U.S. EPA) promulgated a new 8-hour NAAQS for ozone of less than 0.08 parts per million;

WHEREAS, in April 2004 U.S. EPA finalized "Phase 1" of the 8-hour ozone implementation rule (Phase 1 Implementation Rule), which established the classification scheme for nonattainment areas and identified continuing obligations with respect to the existing 1-hour ozone requirements;

WHEREAS, as part of that action U.S. EPA classified San Diego County as a "basic" nonattainment area with an attainment date of June 15, 2009 and subject to the requirements of Subpart 1 (of Part D of Title I) of the Act;

WHEREAS, in November 2005 U.S. EPA supplemented its Phase 1 Implementation Rule with a "Phase 2" rule that specifies the emission controls and planning elements that nonattainment areas must address in their SIPs;

WHEREAS, in December 2006 the United States Court of Appeals for the District of Columbia Circuit vacated U.S. EPA's Phase 1 Implementation Rule and remanded the matter to U.S. EPA for further proceedings, which may include action by U.S. EPA to revise the Phase 1 Implementation Rule consistent with the Court's decision;

WHEREAS, the Court held, among other things, that the Phase 1 Implementation Rule violates the Act insofar as it subjects nonattainment areas with 8-hour ozone design values in excess of 0.09 ppm to Subpart 1 instead of the more prescriptive Subpart 2 requirements;

WHEREAS, U.S. EPA has petitioned the Court to reconsider its decision and, among other things, to clarify that certain nonattainment areas (including areas such as San Diego County) can properly be regulated under Subpart 1 instead of Subpart 2;

WHEREAS, the Court has not yet acted on this petition and many months will probably elapse before the legal issues addressed by the Court are fully resolved and a revised Phase 1 Implementation Rule is promulgated by U.S. EPA;

WHEREAS, the "Eight-Hour Ozone Attainment Plan for San Diego County" (2007 San Diego Plan) indicates that if San Diego County is reclassified under Subpart 2 of the Act, the San Diego County Air Pollution Control District (District) will address all necessary Subpart 2 requirements;

WHEREAS, U.S. EPA has issued Guidance which provides that, due to inherent modeling uncertainties, a weight of evidence analysis may be used to support an attainment demonstration in addition to the results of photochemical air quality modeling;

WHEREAS, the District's attainment demonstration utilizes air quality modeling and a supplemental weight of evidence analysis to demonstrate attainment of the 8-hour ozone standard by June 2009;

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 the U.S. EPA of any SIP revision;

WHEREAS, following a noticed public hearing on May 23, 2007, the Governing Board of the District adopted the 2007 San Diego Plan to fulfill the requirements of the Act for basic 8-hour ozone nonattainment areas;

WHEREAS, as required by federal law the District made the 2007 San Diego Plan available for public review at least 30 days prior to the hearing;

WHEREAS, the 2007 San Diego Plan has been submitted to ARB as a SIP revision, along with proof of public notice publication and environmental documents in accordance with State and federal law;

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;

WHEREAS, to meet the requirements of CEQA the District prepared a Negative Declaration for the 2007 San Diego Plan and adopted it on May 23, 2007;

WHEREAS, the Board finds that:

1. The 2007 San Diego Plan meets all applicable planning requirements established by the Act and U.S. EPA regulations;

2. Combined emissions of ROG and NOx in San Diego County are projected to decline until 2009 and continue declining thereafter due to adopted State, federal, and local controls;

3. The State, federal, and local control strategy identified in the 2007 San Diego Plan provides the necessary emission reductions to demonstrate attainment of the 8-hour ozone standard by 2009;

4. Already adopted State mobile source control regulations will provide the required contingency measures in the event that San Diego County does not attain the standard by 2009; these measures will achieve additional emission reductions beyond those relied on in the attainment demonstration;

5. Although the legal issues regarding U.S. EPA's Phase 1 Implementation Rule are not yet resolved, it is appropriate to approve the 2007 San Diego Plan now in order to avoid undue delay in meeting SIP requirements, and because it is likely that any revised SIP requirements that might ultimately apply to San Diego County would not be significantly different than the provisions currently in place in the District or specified in the Phase 1 and Phase 2 implementation rules;

6. If San Diego County is reclassified as a Subpart 2 nonattainment area or if additional SIP requirements are ultimately imposed by U.S. EPA, the District revisions to the 2007 San Diego Plan will be made to fully address the necessary SIP requirements.

WHEREAS, the Board further finds that:

ARB has reviewed and considered the 2007 San Diego Plan, along with the Negative Declaration prepared for the Plan, and finds that the 2007 San Diego Plan is consistent with the requirements of the Act;

ARB finds that the Negative Declaration prepared for the 2007 San Diego Plan meets the requirements of CEQA.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the 2007 San Diego Plan as a revision to the California SIP.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to submit the 2007 San Diego Plan as a SIP revision, together with the appropriate supporting documentation, to U.S. EPA and to work with U.S. EPA to resolve any issues regarding plan completeness and approvability that may arise.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, as part of the plan submittal to U.S. EPA, to request expedited adequacy findings for the conformity emission budgets.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the 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 pursuant to 40 CFR section 51.102 that the 2007 San Diego Plan was adopted after notice and public hearing as required by 40 CFR section 51.102.

I hereby certify that the above is a true and correct copy of Resolution 07-15, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board