

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT
MEMORANDUM
10/07/2019

TO: FRAQMD BOARD OF DIRECTORS
FROM: Christopher D. Brown, AICP, APCO
SUBJECT: September 24th, 2019 EPA letter to Air Resources Board

RECOMMENDATION:

None, informational item only.

DISCUSSION:

On September 24, 2019, Andrew Wheeler, the Administrator of the United States Environmental Protection Agency (US EPA), sent the Chair of the Air Resources Board (ARB) the attached letter. The District has been working with CARB and the regional US EPA office on the final elements of the Sacramento Regional 2008 NAAQS 8-hour Ozone Attainment Plan and Reasonable Further Progress Plan (Plan) that have not been fully approved. The District intends to continue working with the regional US EPA office to review and approve the final remaining elements of the Plan.

If US EPA disapproves the Plan, it would be published in the Federal Register and may trigger a sanctions clock. Sanctions usually begin in 18 months from effective date in the Federal Register for increased offset ratios and 24 months until the loss of Federal highway funding and the Federal Implementation Plan.

BACKGROUND:

A portion of the District has been designated as a severe nonattainment area for the 2008 8-hour Ozone National Ambient Air Quality Standards. The nonattainment area is the southern portion of Sutter County and is part of the Sacramento Federal Nonattainment Area. The nonattainment area also includes all or portions of Placer County APCD, El Dorado County APCD, Yolo-Solano AQMD, and Sacramento Metro AQMD.

The air districts developed the Plan, showing the region would attain the 2008 standard by the attainment date. This Plan was adopted by the District Board of Directors on October 2, 2017, and forwarded to the California Air Resources Board (CARB) to submit to the U.S. Environmental Protection Agency (US EPA) as a revision to the State Implementation Plan (SIP). The US EPA

received the Plan and deemed it complete on June 14, 2018, starting a one-year deadline for EPA to approve or disapprove the Plan.

Court decisions required the adoption of supplemental SIP revisions by the CARB on October 25, 2018. A September 2016 decision by the U.S. Court of Appeals for the Ninth Circuit in *Bahr v. U.S. Environmental Protection Agency*¹ determined that U.S. EPA had erred in approving an already-implemented contingency measure for the Maricopa County, Arizona nonattainment area. U.S. EPA staff has interpreted this decision to mean that contingency measures must include a future action triggered by a failure to attain or failure to make RFP. Prior to this decision, U.S. EPA guidance had allowed areas to fulfill contingency measure requirements by demonstrating that implementation of the ongoing control programs provided emission reductions in the future. For California, ongoing implementation of CARB's mobile source emission reduction program into the future provided the emission reductions needed for contingency.

In February 2018, the decision in *South Coast Air Quality Management District v. U.S. Environmental Protection Agency*², determined that the appropriate baseline year for RFP for the 75 ppb 8-hour ozone standard is 2011. The decision also concluded that U.S. EPA did not properly support their reasoning for allowing areas to use alternative RFP baseline years between 2008 and 2012, as was allowed in the March 2015 final rule, *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements*. California used an alternative baseline year of 2012 for all plans submitted for the 2008 8-hour ozone standard.

The 2008 8-hour Ozone standard was not the first standard the District was designated as not attaining. Portions of the District were also designated as nonattainment for the 2006 24-hour fine particulate matter standard, the 1997 8-hour ozone standard, and the 1-hour ozone standard. With each designation, the District was required to submit the applicable SIP elements to the US EPA in accordance with the Clean Air Act. In some instances, the District has been late in submitting some of these elements for various reasons. In other cases, submittals that may have met the requirements when they were adopted were later found un-approvable.

A failure to submit, once published in the Federal Register, starts a sanctions clock where in 18 months stationary sources are subject to an increased offset ratio and in 24 months the federal highway funding is lost and the US EPA can institute a Federal Implementation Plan, adopting rules for the area that it finds are necessary to meet the standard or requirement. Typically, the disapproval of a Plan or an element of a Plan would be first communicated by the regional US EPA staff prior to the publication in the Federal Register.

ATTACHMENTS:

September 24, 2019, Wheeler letter

¹ *Bahr v. U.S. Environmental Protection Agency*, (9th Cir. 2016) 836 F.3d 1218.

² *South Coast Air Quality Management District v. U.S. Environmental Protection Agency*, (D.C. Cir. 2018)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 24, 2019

THE ADMINISTRATOR

Ms. Mary D. Nichols
Chair
California Air Resources Board
1001 I Street, P.O. Box 2815
Sacramento, California 95812

Dear Ms. Nichols:

The U.S. Environmental Protection Agency and California Air Resources Board play a critical role in protecting public health through implementing National Ambient Air Quality Standards under the federal *Clean Air Act*. In particular, the state of California facilitates the submittal of State Implementation Plans from its 35 local air districts with *Clean Air Act* responsibilities.

A SIP is a collection of regulations and documents used by a state, territory or local air district to reduce air pollution in areas that do not meet NAAQS. Failure to carry out this SIP responsibility correctly, including submitting timely and approvable plans to assure attainment of the NAAQS, can put at risk the health and livelihood of millions of Americans. As part of our fundamental *Clean Air Act* responsibilities, I have recommitted the EPA to act quickly to approve or disapprove SIPs and to dramatically reduce the backlog of SIPs nationally.

Since the 1970s, California has failed to carry out its most basic tasks under the Clean Air Act. California has the worst air quality in the United States, with 82 nonattainment areas and 34 million people living in areas that do not meet National Ambient Air Quality Standards – more than twice as many people as any other state in the country. As evidenced by the EPA's recent work on interstate air pollution issues as well as analysis accompanying its rulemakings, California's chronic air quality problems are not the result of cross-state air pollution or this Administration's regulatory reform efforts.

In addition, the state of California represents a disproportionate share of the national list of backlogged SIPs, including roughly one-third of the EPA's overall SIP backlog. California's total portion of the SIP backlog is more than 130 SIPs, with many dating back decades. Most of these SIPs are inactive and appear to have fundamental issues related to approvability, state-requested holds, missing information or resources. For example, these SIPs include key ozone NAAQS attainment plans for the following areas:

- Coachella Valley for 1997 and 2008 ozone NAAQS

- Sacramento Metro for 2008 ozone NAAQS
- Western Nevada County for 2008 ozone NAAQS
- Ventura County for 1997 and 2008 ozone NAAQS

We recommend that California withdraw its backlogged and unapprovable SIPs and work with the EPA to develop complete, approvable SIPs. In the event California fails to withdraw them, the EPA will begin the disapproval process consistent with applicable statutory and regulatory requirements.

As you know, if the EPA disapproves a SIP, that triggers statutory clocks for:

- Highway funding sanctions, which could result in a prohibition on federal transportation projects and grants in certain parts of California;
- New Source Review permitting sanctions; and
- A deadline for the issuance of a Federal Implementation Plan.

We certainly want to avoid these statutory triggers, but our foremost concern must be ensuring clean air for all Americans. That is our goal.

To ensure that we are making progress on improving air quality in California, we request a response from CARB by October 10 indicating whether it intends to withdraw these SIPs.

Sincerely,



Andrew R. Wheeler