

State of California
AIR RESOURCES BOARD

EXECUTIVE ORDER S-08-009

Relating to the Adoption and Submittal of the 2008 Amendment to the State Implementation Plan for Particulate Matter in the Owens Valley Planning Area

WHEREAS, on July 1, 1987, the U.S. Environmental Protection Agency (U.S. EPA) promulgated national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM10) in aerometric diameter;

WHEREAS, the Legislature, in Health and Safety Code section 39602, has designated the State 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 SIP for attaining and maintaining 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, the Owens Valley Planning Area is located within the jurisdiction of the Great Basin Unified Air Pollution Control District (District);

WHEREAS, the District is authorized by Health and Safety Code sections 40001, 40702, and 41650, to adopt and enforce rules and regulations to achieve and maintain the NAAQS and to adopt attainment plans;

WHEREAS, the District is authorized by Health and Safety Code section 42316 to order the City of Los Angeles (City) to undertake reasonable PM10 control measures relating to the City's activities in Owens Valley;

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

WHEREAS, section 41650 of the Health and Safety Code requires ARB to approve the nonattainment plan approved 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, 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, on August 7, 1987, the U.S. EPA designated the Owens Valley Planning Area ("Owens Valley") nonattainment for the 24-hour PM10 NAAQS;

WHEREAS, on February 8, 1993, the U.S. EPA designated the Owens Valley as nonattainment, classification of "serious," for the 24-hour PM10 NAAQS;

WHEREAS, Owens Valley PM10 plans adopted in 1998 and 2003 and subsequently submitted to U.S. EPA as revisions to California's SIP identified three controls – shallow flooding, gravel blanket, and managed vegetation – as best available control measures (BACM) for Owens Lake; required the City to implement BACM on a total of 29.8 square miles; requested a five-year extension of the attainment deadline as provided under section 188(e) of the Act; and demonstrated attainment of PM10 NAAQS by the resulting December 31, 2006 deadline;

WHEREAS, in 2005, District's Air Pollution Control Officer (APCO) ordered the City to implement control measures on additional acres pursuant to the supplemental control determination provisions of the 2003 PM10 Plan;

WHEREAS, the District and the City agreed to enter into mediation regarding the APCO's supplemental control determination order;

WHEREAS, on December 4, 2006, a Settlement Agreement was approved by both the District and the City, under which the City agreed to implement additional dust control measures by April 1, 2010 and the District agreed to revise the 2003 SIP before March 1, 2008 to incorporate the provisions of the Settlement Agreement;

WHEREAS, on March 23, 2007, the U.S. EPA published a finding that the Owens Valley did not attain the federal 24-hour PM10 NAAQS by December 31, 2006 as mandated by the Act;

WHEREAS, following a public hearing on February 1, 2008, the District adopted the 2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan (2008 Plan) to amend the 2003 PM10 SIP for the Owens Valley to incorporate the additional dust control measures contained in the 2006 Settlement Agreement;

WHEREAS, 2008 Plan requires the City to continue the operation and maintenance of BACM on 29.8 square miles of Owens Lake bed as identified in the 1998 and 2003 Plans;

WHEREAS, the 2008 Plan includes provisions for the City to test “moat and row” as an alternative control measure during the 2007-2008 dust season;

WHEREAS, the 2008 Plan requires the City to implement additional dust controls on 12.7 square miles, identified in the 2008 Plan, as follows:

- 9.2 square miles are to be controlled, by April 1, 2010, with shallow flooding BACM,
- 3.5 square miles are to be controlled by Moat and Row, if the APCO determines that it constitutes BACM or minimum dust control efficiency (MCDE)-BACM, by October 1, 2009 or by shallow flooding BACM by April 1, 2010, and
- A .5 square mile area of natural drainage canals is to be controlled, by April 1, 2010, by BACM, modified-BACM, or alternative non-BACM controls approved by the APCO that take into account the natural resource issues in this channel area;

WHEREAS, the 2008 PM10 SIP summarizes air quality modeling which demonstrates that the adopted control strategy will achieve a five percent reduction in PM10 emissions per year and will bring the Owens Valley into attainment with the PM10 NAAQS by March 23, 2012;

WHEREAS, the 2008 Plan commits to further investigate, and control as necessary, the contribution of dust from the Keeler Dunes to exceedances of the PM10 NAAQS;

WHEREAS, although the 2008 Plan projects attainment of the NAAQS by March 23, 2012, it notes the possible need for an extension of the attainment date to March 23, 2017 given the need to demonstrate attainment over three years, the unique nature of the source and control measures, and uncertainty concerning emissions from the Keeler Dunes;

WHEREAS, the 2008 Plan provides for the testing of alternatives to BACM as currently defined, and provides for the addition of new BACM, or modifications or adjustments to existing BACM at the discretion of the APCO, provided the BACM performance standards are continuously met during the transition period;

WHEREAS, the 2008 Plan requires the District APCO to assess the effectiveness of the control program at least once per year after May 10, 2010 and to issue a supplemental control determination requiring the City to implement any additional controls the APCO determines are needed if the proposed control strategy does not result in attainment of the standard, or if Reasonable Further Progress Milestones cannot be met;

WHEREAS, 2008 Plan provides for an appeals procedure consistent with Health and Safety Code section 42316, allowing the City to appeal supplemental control determinations to the ARB;

WHEREAS, in the 2008 Plan and the Settlement Agreement, the District and the City request that ARB issue a determination, should the City appeal a decision to ARB, within 90 days if the controls under consideration are required to take effect automatically pursuant to the contingency measure requirements of the federal Clean Air Act or U.S. EPA;

WHEREAS, federal law set forth in section 110(l) of the Act and title 40, section 51.102 of the Code of Federal Regulations (CFR), 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 the U.S. EPA of any SIP revision;

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 prepared an Environmental Impact Report (EIR) for the 2008 PM10 SIP which determined that implementation of the 2008 PM10 SIP has no unmitigated significant adverse environmental impacts;

WHEREAS, the 2008 PM10 SIP and Final EIR were available for public review and comment for at least 30 days, and a noticed public hearing was conducted in Independence, California prior to consideration of the 2008 PM10 SIP and Final EIR as required by the Act and U.S. EPA regulations;

WHEREAS, the District submitted the 2008 PM10 SIP to ARB as a proposed SIP revision on February 8, 2008, along with proof of public notice publication and environmental documents in accordance with State and federal law;

WHEREAS, the Executive Officer has reviewed and considered the EIR prepared for the 2008 PM10 SIP, and finds that it meets the requirements of CEQA; and,

WHEREAS, the Executive Officer has determined that the control strategy and air quality modeling contained in the 2008 PM10 SIP demonstrate attainment of the 24-hour PM10 NAAQS in the Owens Valley by 2012 as required by the Clean Air Act;

WHEREAS, the Executive Officer agrees to the District's request that the Board will issue a determination within 90 days of an appeal by the City to the Board of a supplemental control determination, if that appeal is made according to the "Cooperation Between Parties and Dispute Resolution" provisions of the Settlement Agreement;

NOW, THEREFORE, IT IS ORDERED that the Executive Officer hereby adopts the 2008 PM10 SIP for the Owens Valley Planning Area as a SIP revision.

BE IT FURTHER ORDERED that ARB hereby submits to the U.S. EPA the 2008 PM10 SIP for the Owens Valley Planning Area, and requests that U.S. EPA approve this plan as a revision to the California SIP.

BE IT FURTHER ORDERED that the ARB certifies pursuant to 40 C.F.R. section 51.102 that the 2008 PM10 SIP being submitted as a SIP revision was adopted after notice and public hearing as required by 40 C.F.R. section 51.102.

Executed this 11th day of June, 2008, at Sacramento, California.

Original signed by

James N. Goldstene
Executive Officer