

**SACRAMENTO METROPOLITAN
AIR QUALITY MANAGEMENT DISTRICT**

For Agenda of **October 27, 2011**

To: Board of Directors
Sacramento Metropolitan Air Quality Management District

From: Larry Greene
Executive Director/Air Pollution Control Officer

Subject: Public Hearing to Adopt a Resolution Approving Amendments to the Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan by Removing Control Measure IS-2, Operational Indirect Source Rule

Recommendations

1. Conduct a public hearing; and
 2. Adopt the attached resolution approving the amendments to the Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan.
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Executive Summary

The Sacramento Metropolitan Air Quality Management District (SMAQMD) included the indirect source review (ISR) emissions control measure IS-2 in the Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan (Plan.)¹ This measure requires mitigating reductions for emissions from operation of new land use development projects. The concepts implement a program similar to that of the District's current California Environmental Quality Act (CEQA) review program and are modeled in part after San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 9510, Indirect Source Review.

Staff initially proposed removing IS-2 from the Plan, along with three other measures. At this juncture, removal of these measures does not require EPA approval, because the measures have not been approved into the Plan by the U.S. Environmental Protection Agency (EPA). The Environmental Defense Fund (EDF) and Breathe California commented on the proposal, stating that while the rationale for deleting the other measures was based largely on new information regarding emission reduction levels, there was no similar new information supporting the deletion of IS-2. Staff concurred and revised the proposal to keep IS-2 but remove the other measures from the Plan.

At the August 25, 2011 Board meeting, the Board directed Staff to reassess the decision to maintain the IS-2 commitment, primarily because the measure may not be needed to reach attainment and delaying removal to a future date will subject the action to federal review and approval procedures. Staff has made a detailed analysis of the rationale for keeping or removing IS-2 based on the Board's direction at the August Board meeting. After considering this analysis, Staff is recommending removal of IS-2 from the Plan.

¹ "Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan," EDCAQMD, FRAQMD, PCAPCD, SMAQMD, YSAQMD, March 27, 2009.

Attachments

The table below identifies the attachments to this memo:

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Discussion

Staff's recommendation is based on two primary considerations, discussed below: (1) the decreasing likelihood that EPA will allow Plan emission reduction credits for IS-2, and (2) the increasing likelihood that the region can achieve the reductions without adoption of IS-2.

EPA Emission Reduction Credits: Staff did not include IS-2 emissions reductions in the calculation of total emissions benefits from local control measures in the Plan because of uncertainties in emissions calculations. In other words, the Plan did not rely on achieving any emissions reductions from IS-2 to meet Clean Air Act requirements for attainment or progress. The measure was included to allow a buffer in the event additional emission reductions were needed. However, after the August meeting, Staff learned that EPA had approved SJVUAPCD's ISR Rule 9510, which is very similar to the District's concepts for IS-2, but did not allow any credit for emission reductions associated with the measure². We have reviewed EPA's objections in relationship to our IS-2 measure, and are uncertain whether and how we could overcome them if we sought to rely on the IS-2 emission reductions in future progress and attainment demonstrations. Consequently, it now appears that keeping the measure in the Plan would impose a regulatory burden without any certainty that we will receive any benefit from imposition of the measure through the Plan.

Other Avenues for Achieving Reductions: In addition, the emission reductions that are the goal of the IS-2 measures may be achieved through land use design improvements occurring as a result of other statutory and regulatory drivers. Although these programs target greenhouse gas (GHG) reductions, they will also reduce NOx and VOC emissions, which are the same pollutants targeted by IS-2. And, as these processes move forward, we will be better positioned to tailor the scope of the IS-2 measure to fit the resulting land use programs.

For example, implementation of SB 375³ through the upcoming revisions to Sacramento Area Council of Governments (SACOG) Metropolitan Transportation Plan (MTP) and the Sustainable Community Strategy (SCS) will yield both GHG, NOx and VOC emission reductions. For the SACOG region, CARB set a 7 percent per capita GHG reduction target for 2020 and a 16 percent reduction target for 2035. SB 375 establishes incentives to encourage implementation of the SCS and APS. Developers can get relief from certain environmental review requirements

² 76 FR 26609, May 9, 2011.

³ Senate Bill 375 (Steinberg, 2008).

under the CEQA if their new residential and mixed-use projects are consistent with a region's approved SCS⁴. Although the primary purpose of creating the SCS is to reduce GHGs, using smart growth land use design principles to reduce vehicle miles traveled (VMT) or to promote the use of alternative forms of transportation would also reduce VOC and NOx by reducing the amount of fuel consumed.

New regulations on energy efficiency will likewise affect both the need for and the scope of the IS-2 measures. For example, new building energy efficiency standards (Title 24⁵) took effect in 2010 and new development projects are already incorporating increased energy efficiency measures to reduce GHGs, NOx and VOCs to meet CEQA requirements.

Possible Future Actions

It is possible that we will need to include an IS-2 measure in the future. EPA adopted a new 8-hour ozone standard in 2008, lowering the standard from 0.08 parts per million (ppm) to 0.075 ppm. This new standard is already in effect and is not directly impacted by the recent decision⁶ not to reconsider the 2008 standard⁷. A new ozone plan will be required 3 years after EPA makes nonattainment area designations for the 2008 (0.075 ppm) standard. Although IS-2 was not needed to meet the 1997 federal 0.08 ppm standard, it may be needed for attainment of the new standard. But by the time we need to begin drafting that ozone plan, we should have a much better understanding of the emissions achieved under SB375 and the new energy efficiency requirements, as well as other programs. That information will help us evaluate both the need for IS-2 and the shape and scope of the IS-2 measures.

Alternative Option to Extend Adoption and Implementation Dates

Instead of removing IS-2 from the Plan, the Board could extend the timeline for adoption and implementation of the measure. The alternative option attached to this Board letter would extend the adoption date for IS-2 to 2015 and the implementation date to 2017. This option was included in the notice for this public hearing for Board consideration during the hearing.

Legal Requirements

The Clean Air Act (CAA) Section 110(I) prohibits Plan revisions that would interfere with attainment and requires reasonable notice and public hearings on all revisions. The attached staff report discusses each of the CAA requirements relevant to removing IS-2, Operational Indirect Source Rule, and establishes that removal is permissible because the prior SIP analysis did not rely on the measure to demonstrate attainment or reasonable further progress, or to meet contingency requirements. Removal also does not change the prior conclusion that the SIP contains all reasonable control measures.

⁴ California Public Resources Code §§ 21155, 21155.1, 21155.2, 21159.28.

⁵ Title 24, Part 6 of the California Code of Regulations.

⁶ <http://www.whitehouse.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards>

⁷ 75 FR 2938, January 19, 2011. A new standard in the range of 0.06 to 0.07 ppm would have been considered.

Environmental Review and Compliance

A Final Environmental Impact Report (FEIR) for the 2009 Plan was adopted by the SMAQMD Board of Directors on January 22, 2009. The FEIR concluded that the Plan would have no significant adverse environmental impacts.

This project does not require any changes to the FEIR and, therefore, the proposed revision to the Plan is exempt from CEQA pursuant to California Code of Regulations Title 14, Chapter 3, Section 15162(a)(1) - Subsequent EIRs and Negative Declarations.

Public Review Process

Staff held a public workshop on June 7, 2011 to discuss proposed Plan revisions, including the removal of IS-2 from the Plan. The noticing for the workshop included:

- E-mail notices to:
 - interested and affected parties;
 - industry associations, developers, contractors, local jurisdictions, and other groups associated with land use development;
 - all persons who have requested to receive rulemaking notices.
- Hard copy notices to all who have requested them.
- A notice published in the Sacramento Bee in the Our Region section.
- A notice posted on the District web site. The draft rule and staff report were made available for public review at that time.

Staff did not receive any comments or questions at the public workshop. Staff also met with representatives from Environmental Defense Fund and Breathe California – Sacramento Emigrant Trails on June 20, 2011, to discuss the Plan revisions as presented at the workshop.

The noticing for this public hearing included:

- E-mail notices to:
 - interested and affected parties;
 - industry associations, developers, contractors, local jurisdictions, and other groups associated with land use development;
 - all persons who have requested to receive rulemaking notices.
- Hard copy notices to all who have requested them.
- A notice posted on the District web site. The draft rule and staff report were made available for public review at that time.

Staff also met with representatives from the Sierra Club California and Breathe California – Sacramento Emigrant Trails on September 27, 2011, to discuss the Plan revisions proposed for this hearing.

Conclusion and Recommendations

Staff's analysis of IS-2 identifies several key reasons to remove it from the Plan:

- Based on EPA's action on SJVUAPCD's ISR rule, it is uncertain whether EPA would approve the use of emission reductions from IS-2 in future progress and attainment demonstrations.
- Reductions of VOC and NOx emissions from the operational phase of indirect sources may be achieved through land use design improvements occurring as a result of other statutory and regulatory drivers, such as SB375, Title 24, and CEQA.
- The Plan did not rely on achieving any emissions reductions from IS-2 to meet Clean Air Act requirements for attainment or progress.
- Removal of IS-2 from the Plan at this time does not require EPA approval because EPA has not yet approved the Plan into the SIP.
- IS-2 will be re-evaluated for inclusion in future plans that will be required by federal implementation of lower ozone standards.

For the reasons noted above, Staff recommends that the Board adopt the attached resolution approving revision of the Plan to remove control measure IS-2, Operational Indirect Source Rule.

Respectfully submitted,

Approved as to form:

Larry Greene
Executive Director/Air Pollution Control Officer

Kathrine Pittard
District Counsel

Attachments