

**SACRAMENTO METROPOLITAN  
AIR QUALITY MANAGEMENT DISTRICT**

**STAFF REPORT**

**REVISION TO THE 2009 SACRAMENTO REGIONAL 8-HOUR OZONE ATTAINMENT AND  
REASONABLE FURTHER PROGRESS PLAN:  
REMOVAL OF CONTROL MEASURE  
IS-2, OPERATIONAL INDIRECT SOURCE RULE**

**September 23, 2011**

**Prepared by:** Joe Carle  
Associate Air Quality Engineer

**Reviewed by:** Kevin J. Williams, Ph.D.  
Program Coordinator

**Approved by:** Brigette Tollstrup  
Division Manager

## **SUMMARY AND REASONS FOR REMOVAL**

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.)<sup>1</sup> 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 accepted into the State Implementation Plan (SIP) by the U.S. Environmental Protection Agency (EPA). The Environmental Defense Fund (EDF) and Breathe California pointed out 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 from the proposed SIP based on the Board's direction at the August Board meeting. After considering the following factors, Staff is recommending removal of IS-2 from the SIP.

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 measure<sup>2</sup>. 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 SIP would impose a regulatory burden without any certainty that we will receive any benefit from imposition of the measure through the SIP.

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 375<sup>3</sup> through the upcoming revisions to Sacramento Area

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

<sup>2</sup> 76 FR 26609, May 9, 2011.

<sup>3</sup> Senate Bill 375 (Steinberg, 2008).

Council of Governments (SACOG) Metropolitan Transportation Plan (MTP) and the Sustainable Community Strategy (SCS) will yield both GHG, NO<sub>x</sub> 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 under the CEQA if their new residential and mixed-use projects are consistent with a region's approved SCS<sup>4</sup>. 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 NO<sub>x</sub> by reducing the amount of fuel consumed.

In addition, 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 24<sup>5</sup>) took effect in 2010 and new development projects are already incorporating increased energy efficiency measures to reduce GHGs, NO<sub>x</sub> and VOCs to meet CEQA requirements.

Despite these developments, 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 decision<sup>6</sup> not to reconsider the 2008 standard<sup>7</sup>. 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.

Therefore, Staff recommends removing IS-2 from the Plan to allow time for the above issues to be addressed.

This staff report reviews the anticipated measure and public process to date, the background information regarding the model IS-2 concept, and the legal requirements associated with the measure and this proposed action.

### **Alternative Option to Extend Adoption and Implementation Dates**

An alternative to Staff's proposal to remove IS-2 from the Plan is to extend the timeline of the measure. The notice for the public hearing will include an alternative option to extend the adoption date to 2015 and the implementation date to 2017 for Board consideration at the public hearing.

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<sup>4</sup> California Public Resources Code §§ 21155, 21155.1, 21155.2, 21159.28.

<sup>5</sup> Title 24, Part 6 of the California Code of Regulations.

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

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

## **BACKGROUND**

### **Plan Overview**

In January and February of 2009, the Governing Boards of the Sacramento Federal Nonattainment Area (SFNA) districts approved the Plan. The Plan includes the information and analyses to fulfill the federal Clean Air Act (CAA) requirements for demonstrating reasonable further progress and attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) in the Sacramento region. In addition, the Plan establishes an updated emissions inventory, provides photochemical modeling results, proposes adoption of control measures to meet CAA RACM requirements, and sets new motor vehicle emission budgets for transportation conformity purposes. The Plan was approved by CARB on March 26, 2009 and submitted to the U.S. Environmental Protection Agency (EPA) on April 17, 2009. The Plan has not yet been approved by the EPA. The Plan includes the following elements:

- Attainment demonstration
- Reasonable further progress demonstration
- Reasonably available control measures
- Emissions inventory
- Motor vehicle emissions budget
- General conformity budgets
- Photochemical modeling
- Contingency measures

The control measure IS-2 and its associated emissions reductions were not included in or relevant in any way to the following Plan elements:

- Emissions inventory<sup>8</sup>
- Motor vehicle emissions budgets<sup>9</sup>
- General conformity<sup>10</sup>
- Photochemical modeling<sup>11</sup>

### **Control Measure IS-2, Operational Indirect Source Rule**

Control measure IS-2 addresses operational emissions of pollutants from indirect sources. The term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Indirect sources include parking lots, parking garages, and other facilities subject to any measure for management of parking supply, including regulation of existing off-street parking; however, indirect sources do not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source are not deemed to be indirect sources<sup>12</sup>.

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<sup>8</sup> "Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan", EDCAQMD, FRAQMD, PCAPCD, SMAQMD, YSAQMD, March 27, 2009. Section 5.5 states that the emissions inventory forecasts did not include benefits from measures that had not been adopted by December 31, 2006.

<sup>9</sup> Ibid. Appendix F only includes regional reductions from on-road mobile incentive strategy. Appendix C control measure descriptions show that there are no estimated reductions from IS-2 including on-road emissions.

<sup>10</sup> Ibid. The general conformity inventory listed in Table 12-1 only includes aircraft and ground support emissions that would not be impacted by IS-2.

<sup>11</sup> Ibid. Section 6.3 of Appendix B states that the forecasted emissions used in the modeling accounts for the effects of growth and the effects of adopted emission control rules.

<sup>12</sup> 42 USC 7410(a)(5)(C).

The requirements considered for the rule are based on the District's existing CEQA mitigation program and the operational requirements of SJVUAPCD Rule 9510, Indirect Source Review<sup>13</sup>. Control measure IS-2, Operational Indirect Source Rule, would mitigate the operational emissions from new land use projects. Operational emissions are the combination of area and mobile source emissions associated with an indirect source during tenancy. The rule would require indirect sources to mitigate a portion of their emissions through a combination of on-site and off-site mitigation measures. On-site mitigation could include strategies that reduce vehicle trips or vehicle miles traveled (VMT). Other on-site mitigation measures could be considered, such as improving energy efficiency (decreasing power plant emissions) or reducing on-site combustion emissions.

As an alternative to implementing on-site emission mitigation measures, IS-2 would allow project proponents to opt for off-site mitigation by paying a fee, which the District would use to secure mitigation from off-site emission reduction projects. Off-site mitigation fees would be calculated based on the cost of off-site mitigation projects and the amount of mitigating emission reductions required.

The Plan estimated<sup>14</sup> that IS-2 would result in emission reductions of 0-0.09 tons per day (tpd) of NOx and 0-0.03 tpd of VOC.

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## DISCUSSION

### **SJVUAPCD Rule 9510**

SJVUAPCD Rule 9510, Indirect Source Review (adopted 12/15/05), requires mitigation of emissions during the construction and operational phases of development projects. Control measure IS-2 is modeled partly on the operational phase requirements of the SJVUAPCD rule, which requires mitigation of a project's operational NOx emissions by 33% and PM10 by 50% from the baseline emissions over a period of 10 years. Emissions can be mitigated through on-site measures or by paying off-site mitigation fees to the SJVAPCD in order to offset the remaining emissions through other mitigation projects.

EPA reviewed SJVAPCD Rule 9510 for incorporation into the State Implementation Plan. In May 2011, EPA took final action<sup>15</sup> and approved the rule, but did "not assign any emissions reduction credit to the rule for purposes of attainment or progress demonstration in any area." As stated in EPA's technical support document<sup>16</sup>, EPA found that emissions reductions associated with the rule did not meet enforceability guidelines established for Economic Incentive Programs<sup>17</sup>, Voluntary Mobile Source Emission Reduction Programs<sup>18</sup>, or Emerging and Voluntary Measures<sup>19</sup>.

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<sup>13</sup> SJVUAPCD, "Rule 9510, Indirect Source Review (ISR)" and "Final Draft Staff Report – Rule 9510, Indirect Source Review (ISR), Rule 3180, Administrative Fees for Indirect Source Review." Adopted December 15, 2005.

<sup>14</sup> "Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan", EDCAQMD, FRAQMD, PCAPCD, SMAQMD, YSAQMD, March 27, 2009 Appendix C, pp. C58-C67.

<sup>15</sup> 76 FR 26609, May 9, 2011.

<sup>16</sup> Wong. "Technical Support Document for EPA's Rulemaking for the California State Implementation Plan Regarding San Joaquin Valley Unified Air Pollution Control District Rule 9510, Indirect Source Review (ISR)" May 10, 2010.

<sup>17</sup> EPA. "Improving Air Quality with Economic Incentive Programs, January 2001 (EPA-452/R-01-001).

<sup>18</sup> EPA. "Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (VMEP)," October 24, 1997.

<sup>19</sup> EPA. "Incorporating Emerging and Voluntary Measures into a State Implementation Plan (SIP)," September 2004.

To gain EPA approval to credit emission reductions from IS-2 toward attainment or progress, Staff would need to develop a program that meets EPA's stringent enforcement criteria. This work would involve development of new criteria, policies, and procedures to ensure that the off-site mitigation project reductions are surplus (including identifying potential source categories for the reductions) with publicly accessible and transparent tracking and evaluation of the program on a real-time basis. This would require considerable Staff resources, with no guarantee that the program ultimately would be approved by EPA. Consequently, it now appears that keeping the measure in the SIP would impose a regulatory burden without any certainty that we will receive any benefit from imposition of the measure through the SIP.

### **Reductions from SB 375**

In 2006, the Legislature passed and Governor Schwarzenegger signed AB 32, the Global Warming Solutions Act of 2006<sup>20</sup>, which set the 2020 greenhouse gas emissions reduction goals. In 2008, SB 375 was signed into law to encourage smart growth land use planning to reduce greenhouse gas emissions from cars and light trucks, and help CARB achieve the AB 32 goals. In February 2011, CARB adopted regional greenhouse gas emissions targets for passenger vehicles for the state's 18 Metropolitan Planning Organizations (MPOs). Each MPO, including the Sacramento Area Council of Governments (SACOG), must prepare a "sustainable communities strategy (SCS)" that demonstrates how the region will meet its greenhouse gas reduction target through integrated land use, housing and transportation planning. Once adopted by the MPO, the SCS will be incorporated into that region's federally enforceable Metropolitan Transportation Plan (MTP). ARB is also required to review each final SCS to determine whether it would, if implemented, achieve the greenhouse gas emission reduction target for its region. If the combination of measures in the SCS will not meet the region's target, the MPO must prepare a separate "alternative planning strategy (APS)" to meet the target. For the SACOG region, CARB set a 7 percent per capita reduction target for 2020 and a 16 percent reduction target for 2035. SACOG is scheduled to update the MTP in spring 2012. SB 375 establishes incentives to encourage implementation of approved SCS and APS. Developers can get relief from certain environmental review requirements under the CEQA if their new residential and mixed-use projects are consistent with a region's SCS (or APS) that meets the target.<sup>21</sup>

Although the primary purpose of creating an SCS or APS is to reduce greenhouse gasses, using smart growth land use design principles to reduce vehicle miles traveled (VMT) or to promote the use of alternative forms of transportation can also reduce VOC and NOx by reducing the amount of fuel consumed. Achieving these reductions by implementing SB 375 may reduce the need for requiring reductions through the adoption and implementation of an operational indirect source rule. SACOG anticipates adoption of its SCS in June 2012<sup>22</sup>. By removing control measure IS-2 from the Plan, Staff will have more time to evaluate the effects of the SCS and SB 375 and properly tailor an operational indirect source rule, if it is needed.

### **Title 24**

In 2008, the California Energy Commission updated the Energy Efficiency Standards for Residential and Nonresidential Buildings<sup>23</sup>, which became effective on January 1, 2010. The

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<sup>20</sup> California Health and Safety Code, § 38500 et seq.

<sup>21</sup> California Public Resources Code §§ 21155, 21155.1, 21155.2, 21159.28.

<sup>22</sup> <http://www.sacog.org/files/MTP-SCS-timeline.pdf>

<sup>23</sup> Title 24, Part 6 of the California Code of Regulations, as amended April 23, 2008. Effective January 1, 2010.

standards were updated, in part, to respond to AB 32 by reducing greenhouse gas emissions through energy efficiency, and to meet the West Coast Governors' Global Warming Initiative commitment to include aggressive energy efficiency measures into updates of state building codes.

Title 24 establishes efficiency standards for a large range of energy-related categories, such as HVAC systems, hot water heaters, refrigeration units, lighting, wall and pipe insulation, air leakage, roofing materials, windows, and doors. The more stringent standards that took effect in 2010 will achieve result in greater energy conservation in future developments, thereby limiting the opportunities to use energy efficiency improvements as mitigation measures for an operational indirect source rule, and also reducing the need for such a rule. In addition to the effects of Title 24, new developments are beginning to respond to CEQA requirements by incorporating increased energy efficiency measures to reduce greenhouse gasses and other criteria pollutants<sup>24</sup>.

### **SMAQMD CEQA Review Program**

CEQA requires that public agencies consider and disclose the environmental effects of their decisions to the public and governmental decision-makers. Further, it mandates that agencies implement feasible measures or alternatives that would mitigate significant adverse effects on the environment. Typically, a developer will prepare an Environmental Impact Report, Negative Declaration, or Mitigated Negative Declaration that identifies any significant environmental impacts of the project and indicates the manner in which significant impacts will be mitigated or avoided, if required.

In the mid-1990's, the District first established air quality thresholds of significance. The District Staff also established guidelines to help project proponents mitigate significant air quality impacts. These guidelines have been revised periodically. Staff reviews environmental documents and provides comments to the lead agency (city, county, state, or federal government) on the adequacy of the air quality assessment. Staff examines the potential air quality impacts for each project.

The District has established an emission threshold of 65 pounds per day of NO<sub>x</sub> or VOC for the operational phase as a significant air quality impact. The District recommends that on-site mitigation be required to reduce operational emissions of NO<sub>x</sub> and VOC by 15% when a project has a significant air quality impact. If a project uses on-site mitigation but is still over the significance threshold, then fees must be paid, if required by the lead agency, to offset those excess emissions through off-site mitigation.

As proposed, the control measure IS-2 would require standards and reductions very similar to the District's CEQA mitigation guidelines. The objective of the control measure is to allow the District to require, implement, and enforce air quality mitigation directly, rather than rely on the lead agencies.

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## **LEGAL MANDATES**

### **Clean Air Act Plan Requirements**

The District is part of the SFNA, which is designated as a "severe" nonattainment area for the federal 8-hour ozone standard. The federal CAA requires nonattainment areas to prepare and submit to EPA an 8-hour ozone plan that meets specific requirements, including:

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<sup>24</sup> The new land use project Cordova Hills has outlined a strategy in their Greenhouse Gas Reduction Plan to achieve 20% better energy efficiency beyond the 2008 Title 24 standards.

- Attainment demonstration. Sections 172(c)(1) and 182(c)(2)(A) of the CAA require a demonstration that the plan will provide for attainment of the national ambient air quality standard as expeditiously as practicable by the applicable attainment date. The demonstration must be based on photochemical grid modeling. The attainment date for nonattainment areas classified as “severe” is 2018.
- Reasonable Further Progress (RFP) demonstration. Sections 182(c)(2)(B) and (C) of the CAA require a demonstration that the plan will result in VOC emissions (and/or NOx emissions) reductions from the baseline emissions of an average of at least three percent each year.
- Reasonably Available Control Measures (RACM). Section 172(c)(1) of the CAA requires that the plan provide for the implementation of all reasonably available control measures as expeditiously as practicable. EPA’s RACM policy<sup>25,26</sup> indicates that areas should consider all candidate measures that are potentially reasonably available. Areas should consider all reasonably available measures for implementation in light of local circumstances. However, areas need only to adopt measures if they are both economically and technologically feasible and cumulatively will advance the attainment date (by one year or more) or are necessary for RFP.
- Contingency Measures. Sections 172(c)(9) and 182(c)(9) of the CAA requires plans to include contingency measures which will reduce emissions in the event an area fails to meet Reasonable Further Progress (RFP) milestones or fails to attain by its attainment date.

In February 2009, the districts of the SFNA adopted a plan<sup>27</sup> to achieve the 1997 federal 8-hour ozone standard by 2018. The Plan meets the requirements of the CAA, including an attainment demonstration, RFP, and includes control measures necessary to meet RACM and contingency measure requirements.

### **Removal of IS-2 from the Plan**

Section 110(l) of the CAA requires that each revision to a State Implementation Plan be adopted after reasonable notice and public hearing. EPA cannot approve the revision if it would interfere with attainment, reasonable further progress, or any other applicable CAA requirement. Section 110(a)(5)(A)(i) specifically prohibits EPA from requiring as a condition of approval that attainment plans include indirect source review programs.

The 2009 Plan includes a commitment for the District to adopt measure IS-2 to control emissions of NOx and VOC from the operational phase of indirect sources. The emissions reduction estimate in the plan for IS-2 is 0 - 0.09 tons per day of NOx and 0 - 0.03 tons per day of VOC.

Staff is proposing to revise the Plan to remove control measure IS-2. The Placer County Air Pollution Control District (PCAPCD) Board of Directors removed their commitment to IS-2 from the

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<sup>25</sup> “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 2” (Federal Register, November 29, 2005, p. 71659-71661).

<sup>26</sup> “Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas” (EPA, December 1999).

<sup>27</sup> Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan (ECAQMD, FRAQMD, PCAPCD, SMAQMD, and YSAQMD, March 26, 2009).



Plan on August 11, 2011. If the District also removes this measure, the revision will comply with Clean Air Act Section 110 (I) requirements because:

- The SIP revision will be adopted after 30 day notice and public hearing;
- The SIP revision will not change the attainment demonstration or interfere with attainment or RFP demonstration;
- The control measure was not relied upon or required for RFP;
- Because of the insignificant amount of emissions reductions that IS-2 may potentially generate, removal of this measure from the Plan will not change the RACM conclusions, i.e., that control measures that are not included in the Plan collectively would not advance the attainment date for the Sacramento region;
- The SIP revision has no impact on the contingency measure analysis or our ability to meet the Attainment Demonstration Contingency requirement; and
- The SIP revision does not interfere with any other applicable CAA requirement.

### **Attainment demonstration**

The attainment demonstration<sup>28</sup> established that a minimum emission reductions target of 12.5% reduction in NOx and 3.3% reduction in VOC is needed to meet the 1997 federal 8-hour ozone standard. The attainment demonstration showed that collectively all measures adopted in 2008 achieved this minimum emissions reduction target<sup>29</sup>. The Plan stated<sup>30</sup> that the new control measures are included to meet CAA requirements for RACM. The operational indirect source rule was not adopted in 2008 in any district and not relied on to demonstrate attainment. Therefore, the control measure can be removed from the Plan for both the District and PCAPCD without changing the attainment demonstration or interfering with attainment.

### **Reasonable Further Progress (RFP)**

The RFP demonstration in the Plan shows the SFNA achieves the required 3% emission reduction for milestone years 2011, 2014, 2017, and 2018 without relying on NOx and VOC emissions reductions from new federal, state, regional or local control measures<sup>31</sup>. Therefore, revising the Plan to remove the commitment to adopt control measure IS-2 in both the SMAQMD and PCAPCD would not affect the RFP demonstration.

### **Reasonably Available Control Measures (RACM)**

Although new control measures adopted after 2008 were not required to demonstrate attainment or RFP, they were required to satisfy the RACM requirement<sup>32</sup>. To be conservative, Staff analyzed whether removing the total potential emissions reductions from IS-2 for both the District and PCAPCD changed the RACM conclusions. Because the minimum emission reduction estimated for control measure IS-2 was 0 tpd for both NOx and VOC, the Plan may be revised to remove the IS-2 commitment of both districts without changing the conclusion that the Plan meets RACM requirements.

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<sup>28</sup> "Sacramento Regional 8-Hour Ozone Attainment Demonstration and Reasonable Further Progress Plan, March 27, 2009" Table 8-1, Line L, page 8-5.

<sup>29</sup> Ibid. Table 8-1, Line N.

<sup>30</sup> Ibid. page 8-2.

<sup>31</sup> Ibid, Section 13.5, page 13-4, and Table 13-1, Lines 4 and 13 page 13-5.

<sup>32</sup> CAA Section 172(c)(1) and Section 181(a)(1), and 40 CFR 51.912(d).

### **Contingency Measures**

CAA sections 172(c)(9) and 182 (c)(9) require plans to include contingency measures which will reduce emissions in the event an area fails to meet Reasonable Further Progress (RFP) milestones or fails to attain the standard by its attainment date. Federal guidance requires that sufficient contingency measures be identified in the plan to provide for a 3% emission reduction beyond what is needed for the attainment demonstration<sup>33</sup>. The Plan demonstrated that the 3% contingency measure requirement was met without the inclusion of emissions reductions associated with IS-2. As a result, removal of this measure has no impact on the contingency measure analysis or our ability to meet the Attainment Demonstration Contingency requirement.

### **Upcoming Ozone Standard Revision**

In March 2008, EPA set a new 8-hour ozone standard of 0.075 parts per million (ppm). EPA will review the standard again in 2013.

The Clean Air Act requires a new attainment and reasonable further progress plan for the revised 8-hour ozone standard 3 years after area designations for the new standard. The District will consider potential control measures to include in the plan. The operational indirect source control measure will be re-evaluated at that time.

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## **SUMMARY OF CHANGES**

Staff is proposing to remove IS-2 from the 2009 Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan. This changes Plan Chapters 1, 7, and 14, and its Appendices C and H. The changes are shown in underline/strikeout format.

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## **PUBLIC COMMENTS**

Staff held a public workshop to discuss the proposed Plan amendments on June 7, 2011. At that time, Staff was proposing to remove IS-2, Operational Indirect Source Rule, from the Plan in addition to IS-1, Construction Mitigation Rule. The noticing for this workshop included:

- Email 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 those 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.

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<sup>33</sup> “General Preamble for Implementation of Title 1 of the Clean Air Act Amendments of 1990” (57 FR 13498, April 16, 1992) and SMAQMD 2009, Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan, Sacramento Metropolitan Air Quality Management District, (March 26, 2009, Section 7-21, p7-32).

On June 20, 2011, Staff met with representatives from Environmental Defense and Breathe California, who were not able to attend the workshop. They opposed the removal of the ISR control measures from the Plan. Staff changed the original proposal after the meeting to not include removal of control measure IS-2 because, in contrast to IS-1, the IS-2 control measure had not been as thoroughly analyzed and proposed concepts had not been presented to the public or the Board.

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## **BOARD MEMBER COMMENTS AT AUGUST 25, 2011 MEETING**

On August 25, 2011, the District's Board of Directors approved amendments to the Plan to remove control measure IS-1, Construction Mitigation, from the Plan. At that meeting, Board members questioned Staff about why the removal of control measure IS-2 from the Plan was not being proposed.

Board members expressed concern that an operational indirect source rule would inhibit business and job growth due to the costs associated with such a rule. 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.

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## **ENVIRONMENTAL REVIEW AND COMPLIANCE**

The Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan (Plan)<sup>34</sup> included new regional and local control measures as part of the Plan. The measures included IS-2 (Operational Indirect Source Rule). All measures were evaluated under CEQA to determine whether or not they had the potential to generate adverse environmental impacts. A Final EIR was certified and the Plan was adopted by the SMAQMD Board of Directors on January 22, 2009. The Final Environmental Impact Report (FEIR)<sup>35</sup>, filed on January 23, 2009, concluded that the Plan would have no significant adverse environmental impacts.

The District evaluated the removal of control measure IS-2 under CEQA, since removal of this measure is a discretionary action undertaken by a public agency<sup>36</sup>. As discussed in the Plan Overview section of this report, emission reductions associated with IS-2 were not included or considered in the emissions inventory, motor vehicle emission budgets, general conformity, or photochemical modeling elements of the Plan. In addition, as discussed in the Legal Mandates section, the removal of IS-2 from the Plan does not change or alter the Attainment Demonstration, the Reasonable Further Progress demonstration, the Reasonably Available Control Measures conclusions, or the Contingency Measures conclusions in the Plan and the Plan FEIR. Rather, as discussed in the Plan and FEIR, the additional measures provide a safety margin to ensure attainment in the unlikely event that existing proposed measures were not fully adopted or implemented. In addition, the measures were identified as Reasonably Available Control Measures. The RACM analysis identified measures that were not included in the Plan, because when considered individually or collectively they did not advance attainment by a year. When the

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<sup>34</sup> Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan, Sacramento Metropolitan Air Quality Management District, March 26, 2009.

<sup>35</sup> Final Environmental Impact Report, Sacramento Regional Nonattainment Area 8-Hour Ozone Attainment and Reasonable Further Progress Plan, State Clearinghouse No. 2006102136, Sacramento Metropolitan Air Quality Management District, December 2008.

<sup>36</sup> Public Resources Code, State of California 21065(a).

IS-2 control measure is considered in conjunction with those previously-excluded measures, the measures still do not advance attainment by a year and therefore, for RACM purposes, IS-2 is not required to be included in the Plan. The remaining Plan measures, after deletion of IS-2, still provide an adequate safety margin and still constitute RACM measures. Accordingly, the Plan and FEIR anticipated that all or some of the new measures would not be adopted as noted in the Attainment Demonstration for the Final EIR<sup>37</sup>. By definition, a margin of safety provides for contingencies, in this case, where the measure is not adopted or achieves fewer reductions than anticipated. Consequently, the possibility that the IS-2 measure would not be adopted was considered in the Final EIR. In addition, lead agencies of the Sacramento region are already implementing similar mitigation under CEQA. This project does not require any changes to the previous 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.

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## CONCLUSION

Staff has performed further analysis of control measure IS-2, and is proposing to remove it from the Plan for the following reasons:

- EPA has not yet approved the Plan into the SIP. At this time, removal of IS-2 does not require EPA approval. However, once EPA approves the Plan, any future removal will also require the concurrence of EPA.
- 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.
- EPA 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 measure. 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.
- 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, such as SB375, Title 24, and CEQA. 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. 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.
- EPA has adopted a lower 8-hour ozone standard, and when this standard is implemented, the District will be required to develop a new plan. The standard may be lowered again in 2013. IS-2 will be re-evaluated for inclusion in future plans. It also could be implemented in the absence of a SIP commitment if a significant emissions benefit is shown.

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<sup>37</sup> Final Environmental Impact Report, Sacramento Regional Nonattainment Area 8-Hour Ozone Attainment and Reasonable Further Progress Plan, State Clearinghouse No. 2006102136, Sacramento Metropolitan Air Quality Management District, December 2008. Section 2.7 – Attainment Demonstration, Page 2-26.

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- Staff provided public notice of an alternative proposal to delay adoption and implementation of IS-2, but does not recommend that alternative for the reasons noted above.