State of California
AIR RESOURCES BOARD

STATE IMPLEMENTATION PLAN REVISION FOR FEDERAL NITROGEN DIOXIDE STANDARD INFRASTRUCTURE REQUIREMENTS

Resolution 12-34

November 15, 2012

Agenda Item No.: 12-8-1

WHEREAS, the Legislature in Health and Safety Code section 39602 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 preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (NAAQS) as required by the federal Clean Air Act (CAA; 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) as necessary to comply with the CAA;

WHEREAS, section 39602 of the Health and Safety Code also provides that the SIP shall include only those provisions necessary to meet the requirements of the CAA;

WHEREAS, ARB has primary responsibility for the control of air pollution from vehicular sources, including motor vehicle fuels, as specified in sections 39002, 39500, and part 5 (commencing with section 43000) of the Health and Safety Code, and for ensuring that districts meet their responsibilities under the CAA pursuant to sections 39002, 39500, 39602, 40469, and 41650 of the Health and Safety Code;

WHEREAS, 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, 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, on January 22, 2010, the United States Environmental Protection Agency (U.S. EPA) promulgated a new 1-hour average nitrogen dioxide NAAQS at a level of 100 parts per billion;

WHEREAS, on January 22, 2010, U.S. EPA retained the annual average nitrogen dioxide NAAQS at a level of 53 parts per billion;

WHEREAS, when U.S. EPA promulgates a NAAQS, CAA Section 110(a)(1) requires each state to adopt, after reasonable notice and public hearing, and submit to the U.S. EPA Administrator an Infrastructure SIP that provides for implementation, maintenance, and enforcement of the NAAQS throughout the State;

WHEREAS, a state must address the specific elements of CAA Sections 110(a)(2)(B) through(H), and (J) through (M) in its Infrastructure SIP for the 1-hour average nitrogen dioxide NAAQS (75 Fed. Reg. 6474, 6523);

WHEREAS, the Infrastructure SIP does not contain any proposed control strategy, but instead sets forth the State's and district's authorities and abilities to develop and implement a strategy for attaining and maintaining the NAAQS;

WHEREAS, many of the Infrastructure SIP requirements were addressed in California's comprehensive CAA Section 110(a)(2) SIP, which was submitted in response to the CAA of 1970 and approved by U.S. EPA in 1979 in 40 Code of Federal Regulations (CFR) 52.220;

WHEREAS, this Infrastructure SIP revision provides ARB's commitment to comply with CAA 110(a)(2) requirements, as well as responds to new elements required by the 1990 CAA Amendments and by U.S. EPA's 2010 promulgation of the revised nitrogen dioxide NAAQS;

WHEREAS, the Infrastructure SIP for nitrogen dioxide must be submitted to U.S. EPA by January 22, 2013 (three years after promulgation of the 2010 nitrogen dioxide NAAQS);

WHEREAS, CAA Section 110(l) and 40 CFR Section 51.102 require one or more public hearings, preceded by at least 30-day notice and opportunity for public review, be conducted prior to the adoption and submittal to U.S. EPA of any SIP revision;

WHEREAS, on October 15, 2012, ARB staff circulated for public review a Staff Report entitled *Proposed State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements,* which includes a discussion of all elements of the Infrastructure SIP for nitrogen dioxide as required under CAA Section 110(a)(2);

WHEREAS, the Board finds that the proposed Infrastructure SIP for nitrogen dioxide demonstrates ARB and districts' authorities and abilities to:

1. Monitor, compile, and analyze ambient nitrogen dioxide air quality data and provide the data to U.S. EPA;

2. Implement an enforcement program for control measures associated with implementing the nitrogen dioxide NAAQS and a permit program regulating the construction and modification of major stationary nitrogen dioxide sources;

3. Prohibit nitrogen dioxide emissions from contributing significantly to nonattainment of the nitrogen dioxide NAAQS, interfering with maintenance of the nitrogen dioxide NAAQS, or contributing to reduced visibility in another state;

4. Provide assurances that the agencies have adequate personnel, funding, and legal authority to carry out provisions in the SIP, that a majority of their board members represent the public interest, and that the state can ensure that the districts can implement provisions in the SIP;

5. Require owners and operators of stationary nitrogen dioxide sources to install, maintain, and replace equipment for monitoring stationary source nitrogen dioxide emissions and to provide periodic reports on these emissions;

6. Halt nitrogen dioxide emissions that cause or contribute to injury of public health or welfare and have adequate contingency plans to implement their authority;

7. Revise their SIP when a NAAQS is revised, new attainment methods become available, or U.S. EPA determines that a current SIP is inadequate to attain the NAAQS or to comply with additional CAA requirements;

8. Meet the applicable requirements of the CAA relating to consultation and public notification, and meet the requirements for Prevention of Significant Deterioration and visibility protection, as they apply to nitrogen dioxide;

9. Provide for using air quality models to predict the effect of nitrogen dioxide emissions on ambient air quality and submitting the modeling data to U.S. EPA when requested;

10. Assess and collect from owners and operators of stationary nitrogen dioxide sources, fees sufficient to cover the reasonable costs of reviewing and acting upon a permit application and fees sufficient to cover the reasonable costs of implementing and enforcing the permit, if granted (owners or operators are also required to comply with the fee provisions of Title V Sections 501 through 507 of the CAA); and

11. Consult with and allow for participation by local political subdivisions affected by the Infrastructure SIP for nitrogen dioxide.

WHEREAS, the Board finds that:

1. The proposed Infrastructure SIP for nitrogen dioxide meets the applicable requirements established by the CAA and U.S. EPA regulations;

2. The proposed Infrastructure SIP for nitrogen dioxide meets the notice and public hearing requirements specified in 40 CFR Section 51.102; and

3. The proposed Infrastructure SIP for nitrogen dioxide will not result in any significant adverse environmental impacts because it does not contain any control strategies and is simply a demonstration of ARB's and the districts' authority and abilities to implement the nitrogen dioxide NAAQS, therefore, there is no possibility that adoption of the SIP will have any significant impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the Infrastructure SIP for nitrogen dioxide, as set forth in Attachment A to this resolution, as a revision to the California State Implementation Plan.

BE IT FURTHER RESOLVED that the Board certifies pursuant to 40 CFR Section 51.102 that the notice and public hearing requirements of that section were met.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to submit the adopted Infrastructure SIP for nitrogen dioxide to U.S. EPA for approval, along with other supporting documentation, no later than January 22, 2013.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the Infrastructure SIP for nitrogen dioxide.

I hereby certify that the above is a true and correct copy of Resolution 12-34, as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements, Released October 15, 2012, including Appendix A, available at: http://www.arb.ca.gov/planning/sip/sip.htm.