



January 17th, 2023

Clerks' Office, California Air Resources Board
1001 I Street, Sacramento, California 95814

Submitted Via Online Portal: <https://ww2.arb.ca.gov/applications/public-comments>

RE: 2022 Ozone SIP for the San Joaquin Valley

Dear Chair Randolph and Members of the Board,

Leadership Counsel for Justice and Accountability (LCJA) works alongside residents of disadvantaged communities in the San Joaquin Valley (Valley) which are most impacted by disinvestment, pollution, incompatible land uses, and some of the worst air quality in the Country. These comments reflect our long-standing collaboration with residents seeking improved air quality for themselves, their families, and their communities, including policy solutions they have prioritized to reduce air pollution impacting disadvantaged communities. The comments below reiterate their concerns with the proposed 2022 Ozone Plan for the Valley. The Plan currently does not meet the legal standards for State Implementation Plans (SIPs) set forth in the Clean Air Act (CAA)¹ and does not ensure that the Valley will meet the ozone standard of 70 parts per billion (ppb) by 2037.

Given the Valley's extreme nonattainment of the Ozone National Ambient Air Quality Standard (NAAQS), the San Joaquin Air Pollution Control District (hereafter, Air District) and California Air Resources Board (CARB) have a responsibility to develop and adopt a robust Ozone Plan which does everything possible to meet the CAA's ozone requirements. The Valley is one of only two regions in the nation in extreme nonattainment for the 70 ppb ozone standard.² The Valley's ozone levels are putting the public's health and safety, the Valley's flora and fauna, and overall aesthetics in serious jeopardy, in contravention of the purposes of the Federal Clean Air Act. 42 U.S.C. § 7410(b)(1). Three Valley cities rank in the top five most polluted cities in

¹ 83 Fed. Reg. 62,998, December 6, 2018, available at <https://www.govinfo.gov/content/pkg/FR-2018-12-06/pdf/2018-25424.pdf>.

² National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65,292-65,468 (October 26, 2015). <https://www.govinfo.gov/content/pkg/FR-2015-10-26/pdf/2015-26594.pdf>.

the nation for ozone pollution,³ contributing to the highest asthma rates in the state.⁴ Beyond contributing to asthma, ozone pollution also triggers a variety of health problems, including chest pain, coughing, throat irritation, congestion, reduced lung function, and inflammation of the linings of the lungs.⁵ Repeated exposure may even permanently scar lung tissue. Multiple studies have associated rising hospital admissions and emergency room visits to higher ozone levels in the Valley.⁶

The Valley's poor air quality not only harms the physical health of residents, it also harms their mental wellbeing. For example, one study found that higher ozone levels predicted steeper increases in depressive symptoms across adolescent development, a pattern that was not observed for other forms of psychopathology symptoms.⁷ These findings underscore the importance of considering ozone exposure in understanding trajectories of depressive symptoms and overall mental health. Furthermore, studies have also shown a correlation between air pollution and crime. One study found that a 10% increase in same-day exposure to ozone is associated with a 0.3% increase in violent crime or a 0.35% increase in assaults.⁸ In fact, results from that study suggest that a 10% reduction in daily PM_{2.5} and ozone could save \$1.4 billion in crime costs per year, a previously overlooked cost associated with pollution.⁹

Further, overburdened communities continuously endure higher exposures on top of social vulnerabilities such as lack of access to affordable health care and housing.¹⁰ The health and quality of life of all Valley residents depends on robust, expeditious, and stringent planning. Chronic exposure to ozone pollution damages delicate airway tissue, leaving Valley residents more vulnerable to airborne infectious diseases such as Covid-19. As identified by the California

³ American Lung Association. State of the Air 2022 Report: Most Polluted Cities, available at, <https://www.lung.org/research/sota/city-rankings/most-polluted-cities>.

⁴ Four of eight Valley counties fall between the 50th-74th percentile for lifetime asthma prevalence for all ages; the other four counties are above the 75th percentile for asthma prevalence. California Department of Public Health, California Breathing, County Asthma Data Tool. Available at <https://www.cdph.ca.gov/Programs/CCDCPP/DEODC/EHIB/CPE/Pages/CaliforniaBreathingCountyAsthmaProfiles.aspx>.

⁵ EPA. Health Risk and Exposure Assessment for Ozone. (August 2014). Available at <https://nepis.epa.gov/Exe/ZyPDE.cgi/P100KBUE.PDF?Dockey=P100KBUE.PDF>

⁶ Gharibi, Hamed et al. "Ozone pollution and asthma emergency department visits in the Central Valley, California, USA, during June to September of 2015: a time-stratified case-crossover analysis." *The Journal of asthma: official journal of the Association for the Care of Asthma* vol. 56,10 (2019): 1037-1048. doi:10.1080/02770903.2018.1523930.

⁷ Manczak, E. M., Miller, J. G., & Gotlib, I. H. (2022). Census tract ambient ozone predicts trajectories of depressive symptoms in adolescents. *Developmental Psychology*, 58(3), 485–492. <https://doi.org/10.1037/dev0001310>.

⁸ Jesse Burkhardt, et. al., "The effect of pollution on crime: Evidence from data on particulate matter and ozone", *Journal of Environmental Economics and Management*, Volume 98, 2019, 102267, ISSN 0095-0696, <https://doi.org/10.1016/j.jeem.2019.102267>.

⁹ Id.

¹⁰ Office of Environmental Health Hazard Assessment. California Communities Environmental Health Screening Tool. Available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

Office of Environmental Health Hazard Assessment's (OEHHA) CalEnviroScreen, 7 of the 10 most disadvantaged communities in California are located in the Valley.¹¹ Further, the majority of residents in census tracts most burdened by pollution are communities of color.¹² The AB 617 communities of South Central Fresno, Shafter, Arvin and Lamont have been selected by CARB as among the most emission burdened communities in the State and all of them fall within the Valley and under the Air Districts authority.

Ozone not only impacts human's physical and mental health, but it also contributes to environmental degradation in the Valley, impairing views in the nearby Sierra Nevada Mountains,¹³ harming plants and wildlife in local ecosystems, and significantly reducing Valley agricultural yields. For example, "[a]mbient ozone substantially reduces harvests of strawberries, grapes, peaches and nectarines by as much as 2% for strawberries to 22% for table grapes, implying total losses of roughly one billion dollars per year."¹⁴

The Valley has repeatedly failed to meet nearly all existing ozone and PM_{2.5} NAAQS. The Valley remains in extreme nonattainment with the 1997, 2008, and 2015 8-hour ozone standards.¹⁵ Additionally, the Valley has failed to attain several NAAQS by their respective deadlines.¹⁶ This long history of failure underscores the need for the Air District and CARB to enact stringent new measures paired with rigorous enforcement to achieve significant reductions in nitrogen oxides (NOx) and reactive organic gasses (ROG) immediately in order to comply with the CAA's requirements. It also highlights the need for a robust contingency plan.

As discussed further below, the current Plan fails to meet CAA requirements, fails to incorporate public input, and fails to adopt all feasible available control measures in order for the Valley to come into attainment as expeditiously as practicable. As such, CARB should not approve the plan and instead refer the plan back to the Air District, and direct the Air District to

¹¹ <https://ww2.valleyair.org/media/jcfmokot/000-proposed-plan.pdf> at 62.

¹² OEHHA, Analysis of Race/Ethnicity and CalEnviroScreen 4.0 Scores (Oct. 2021), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/document/calenviroscreen40raceanalysisf2021.pdf>.

¹³ The Valley's biggest city and population center has determined that views of the Sierras need not be protected because the views are already so limited due to poor air quality. "The Sierra Mountains are the only natural and visual resource in the Project area. Views of these distant mountains are afforded only during clear conditions due to poor air quality in the valley. The City of Fresno does not identify views of these features as required to be "protected." This is from Environmental Assessment No. P21-06275 (for an application for a truck trailer parking lot to serve a warehouse) by the City of Fresno, p. 13.

¹⁴ Hong, C., Mueller, N.D., Burney, J.A. et al. Impacts of ozone and climate change on yields of perennial crops in California. *Nat Food* 1, 166–172 (2020). <https://doi.org/10.1038/s43016-020-0043-8>

¹⁵ See generally, EPA Green Book: Nonattainment Areas for Criteria Pollutants, available at, www.epa.gov/green-book.

¹⁶ 66 Fed. Reg. 56476 (Nov. 8, 2001) (1-hour ozone standard failure to attain by 1999); 67 Fed. Reg. 48039 (July 23, 2002) (PM-10 standard failure to attain by 2001); 76 Fed. Reg. 82133 (December 30, 2011) (1-hour ozone standard failure to attain by 2010); 81 Fed. Reg. 84481 (November 23, 2016) (1997 24-hour and annual PM_{2.5} standards failure to attain by 2015).

comply with Title VI of the Civil Rights Act, adopt contingency measures, adopt additional control measures, and ensure a meaningful and fair public process.

I. The Valley Has Not Demonstrated Reasonable Further Progress, and Must Adopt Further Feasible Emission Reduction Measures.

The Valley is required by the Clean Air Act to “provide for implementation of all control measures needed for attainment as expeditiously as practicable.”¹⁷ Further, section 182(c)(2)(B) of the CAA requires the Valley to demonstrate Reasonable Further Progress, a 3 percent per year cumulative reduction of ozone precursors averaged over each consecutive three-year period until attainment is reached. The Air District cannot merely adopt a plan that defers attainment until the last possible year.¹⁸ The District must demonstrate the plan provides at least a yearly 3 percent reduction and adopt all feasible emission reduction measures in order to reach attainment as expeditiously as practicable.

With 15 years until the 2037 attainment deadline, it is not enough for the Air District to merely continue to implement its current inadequate regulations. All of the District’s previous plans have fallen short, and relying on the same measures to reach a much stricter public health standard would lock in another 15 years of poor air quality in the Valley, contributing to the public health crises and environmental degradation. Additionally, it is not sound decision making nor does it support the idea the 2022 Plan is sufficient to meet the federal standards. The Valley is one of only two regions in the nation in extreme nonattainment for the 70 ppb ozone standard.¹⁹ We should not be the last region in the country to reach compliance. The residents of the Valley deserve better. They should not have to suffer the consequences of living in the one region in the Country that is incapable of reaching a healthy level of ozone. Thus, we recommend the following actions be taken which represent feasible measures that should be practically implemented and are required to be analyzed and included in this SIP.

To meet clean air goals for ozone pollution, the San Joaquin Valley Air District (District) must implement²⁰:

¹⁷ 40 C.F.R. § 51.1308.

¹⁸ See, Figure ES-6 Percent of Valley Population in Attainment through Implementation of 2022 Ozone Plan, at pg. 10.

¹⁹ National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65,292-65,468 (October 26, 2015). <https://www.govinfo.gov/content/pkg/FR-2015-10-26/pdf/2015-26594.pdf>

²⁰ U.S.C. § 7410(a)(2)D (the plan must: (D) contain adequate provisions— (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will— (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan. . . to prevent significant deterioration of air

1. Improvements to Rule 9510 (Indirect Source Review)²¹

- Rule 9510 (Indirect Source Review) applies only to owners of indirect sources, not to operators. The South Coast Air District’s warehouse indirect source rule, Rule 2305, applies to both owners and operators of warehouses located within the South Coast air basin, allowing the South Coast Air District to seek reporting from owners while working directly with operators of the warehouses to address any changes in activity required at a particular site. Rule 9510 should adopt a similar approach that covers the actions of warehouse operators who control most daily activities at warehouses.
- Under Rule 9510, section 2, Rule 9510 applies only to warehouses built after March 2006. South Coast Rule 2305 applies to older warehouses as well. Rule 9510 should also apply regardless of when a warehouse was built.
- Rule 9510 does not differentiate between truck classes to determine emissions reduction needs. South Coast Rule 2305(d)(1) uses “Weighted Annual Truck Trip” calculations, which differentiate between types of trucks being drawn to a warehouse, to determine the level of emission reductions required at a facility. Rule 9510 should also include a mechanism to allow the San Joaquin Valley to collect better data on the types of trucks being drawn to warehouses. Based on that information, trucks with greater emissions could be identified and their trips to and from a warehouse can determine the level of emission-reducing actions the facility would need to meet emissions reduction goals.
- Rule 9510 does not require that impacts to adjacent communities be quantified. South Coast Rule 2305(d)(4)(A)(iv)(II) requires that proponents quantify expected NO_x and diesel particulate matter reductions expected to have a reach of within three miles of the warehouse—therefore targeting the most verifiable emissions reductions strategies for communities immediately adjacent to the warehouse. Rule 9510 should similarly require quantification of impacts to adjacent communities.
- Rule 9510 does not require tracking of actual truck trips, including third party fleets.

quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections . . .42 USCS §§ 7426, 7415 (relating to interstate and international pollution abatement)).

²¹ We ask if the AD does not approve additional ISR rules, or strengthen its existing Rule 9510 CARB include revisions to the ISR rule and additional ISR rules under 42 U.S.C. 7410(a)(5)(A)(i). “Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.” 42 U.S.C. § 7410(a)(5)(A)(i).

South Coast Rule 2305(d)(1)(B) requires a mechanism to monitor actual truck visits to a warehouse, which allows the South Coast Air District to better incentivize reliance on clean fleets and to better track the real-world effects of warehouse operations. Rule 9510 should require monitoring and reporting of actual truck trips as well, including those for zero and near-zero emissions trucks.

- Rule 9510 exempts smaller warehouses that would be covered by indirect source rules elsewhere. Under section 2.2.3, Rule 9510’s requirements for “large development projects” apply to light industrial facilities only if they are above 125,000 square feet. South Coast Rule 2305(b) sets a lower threshold of 100,000 square feet. The threshold in Rule 9510 should be decreased.

2. Regulate Pesticide Emissions

- The 2022 Ozone Plan should include a Pesticide Element, as it did in 1994.²²
- The Air District should include pesticide regulations for 1-3-Dichloropropene, and for all other pesticides.
- The 2009 Pesticide Revised SIP Commitment for the San Joaquin Valley set an 18.1 tons per day VOC emissions cap to ensure that emissions from agricultural and commercial structural pesticide use do not exceed the equivalent of the Valley’s 12 percent reduction commitment from the 1994 Pesticide Element.²³ The Air District should reduce the cap of VOC emissions and increase the percentage of reduction, from the 12 percent level set back in 1994.
- The Air District’s non-fumigant regulations establish limits on the sale and use of high-VOC formulations of non-fumigant pesticide products that contain any of four specified primary active ingredients.²⁴ The Air District should phase out the use of these pesticides, and study if the sale of other active ingredients should be limited.

²² 62 Fed. Reg. 1150, (U.S. EPA, 1997) Final Approval of the 1994 Pesticide SIP
<https://www.govinfo.gov/content/pkg/FR1997-01-08/pdf/97-144.pdf>

²³ 77 Fed. Reg. 65294,
<https://www.federalregister.gov/documents/2012/10/26/2012-26311/approval-and-promulgation-of-implementation-plans-california-revisions-to-the-california-state>

²⁴ 81 Fed. Reg. 64350,
<https://www.federalregister.gov/documents/2016/09/20/2016-22499/approval-of-california-air-plan-revisions-department-of-pesticide-regulations>

3. Confined Animal Facilities

- Rule 4570 (Confined Animal Facilities) allows sources to choose from a menu of controls without ensuring all feasible controls are in place.

4. Implement Control Measures for Fertilizer Emissions

- Current rules contain no control measures or management practices to limit NO_x emissions from soil due to nitrogen-based fertilizer treatments. Studies suggest the Air District's inventory radically underestimates NO_x emissions from soil. One study found that the overlooked source could actually increase total NO_x in the inventory by over 50%.²⁵ A more recent study came to similar conclusions finding that soil may be responsible for 40% of total California NO_x emissions based on July 2018 data.²⁶ A determination that soil contributes significantly to NO_x emission in the Valley would not only mean that dairy and poultry manure land application and soil fertilization controls should be under consideration in order to address ozone, it would also undermine the claim that the Valley is "NO_x-limited" and that ammonia controls at agricultural sources provide little to no benefit. The Air District's ozone control strategy should fully account for soil NO_x.

5. Support Building Electrification

- Current rules do not require electric replacements for gas-fired boilers, steam generators, and process heaters where feasible. Electric alternatives to conventional equipment are technically feasible and commercially available up to a heat demand of approximately 400 degrees Celsius. Electric heat pumps and electric-powered mechanical vapor recompression equipment for evaporation are already used on some industrial sites. These and other electric technologies have been shown capable of meeting the demands of myriad industrial applications, including in the paper, food and beverage, metals, plastic, textiles, and wood industries.²⁷ The South Coast Air District has presented a control

²⁵ See M. Almaraz, et al., Agriculture is a major source of NO_x pollution in California. *Sci. Adv.* 4, eaao3477 (2018) available at: <https://www.science.org/doi/pdf/10.1126/sciadv.aao3477>, attached as Exh. 30.

²⁶ Tong Sha, Xiaoyan Ma, Huanxin et. al., "Impacts of Soil NO_x Emission on O₃ Air Quality in Rural California," *Environmental Science & Technology* 2021 55 (10), 7113-7122, available at: <https://pubs.acs.org/doi/10.1021/acs.est.0c06834>.

²⁷ McKinsey & Co., *Plugging in: What Electrification Can Do for Industry* (May 2020), <http://tinyurl.com/3a9shsnv>; Global Efficiency Intelligence et al., *Electrifying U.S. Industry: A Technology- and Process-Based Approach to Decarbonization* (Jan. 2021), <https://tinyurl.com/y9d2mv8k>; ACEEE, *Beneficial Electrification in Industry* (July 2020), <https://www.aceee.org/sites/default/files/pdfs/ie2002.pdf>; ACEEE, *Industrial Heat Pumps* (Mar. 2022), <https://www.aceee.org/sites/default/files/pdfs/ie2201.pdf>.

strategy that relies on industrial electrification, including of boilers.²⁸ Electrification should be required where feasible.

- Rules 4902 (Residential Water Heaters) and 4905 (Natural Gas-Fired, Fan-Type Central Furnaces) do not contain electrification requirements for new buildings and for appliance replacements in existing buildings, even though many other jurisdictions have implemented such requirements.
- Rule 4352 (Solid Fuel Fired Boilers, Steam Generators, and Process Heaters) generally allows outdated equipment, even though more effective equipment is available and feasible to implement.

6. Factor Public Health and Social Costs in All Economic Feasibility Assessments

- For California, EPA concluded that attaining the 70 ppb standard after 2025 would prevent thousands of California residents from experiencing various health issues originating from excess ozone exposure, providing for public health benefits worth \$1.2 to \$2.1 billion.²⁹ As discussed already, ozone pollution also has a financial impact on mental health, crime, the environment, missed school and work day, and agricultural production. The District should factor in these additional costs when considering economic feasibility. Currently, to determine economic feasibility, the District conducts a cost effectiveness analysis which evaluates the economic reasonableness of an air pollution control measure or technology as it applies to operators in the Valley. A cost effectiveness analysis examines the added cost, in dollars per year, of the control technology or technique, divided by the emissions reductions achieved, in tons per year (tpy). The Air District should include the above mentioned factors in its economic feasibility analysis.

7. Allocate Incentive Programs, ISR, and VERA Funding in an Equitable Manner, that Reduces the Most Amount of Pollution the Fastest.

- Rule 9510 provides the Air District considerable discretion in how and where to spend funds collected through the ISR and VERA rules. The District should create a plan to ensure that funding is distributed in an equitable and just manner that also maximizes

²⁸ S. Coast AQMD, 2022 Air Quality Management Plan Control Measures Workshop: Agenda Item 5, at 14-37 (Nov.10, 2021),

<http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/am-pres-agenda-item-5-nox-measures-110621.pdf?sfvrsn=6>.

²⁹ EPA. EPA's Final Air Quality Standards for Ground-Level Ozone: By the Numbers. Available at https://www.epa.gov/sites/default/files/2015-10/documents/20151001_bynumbers.pdf

emission reductions. For example, a warehouse project paying the Air District to offset its pollution shouldn't have that funding going towards projects on the other side of the air basin. Such actions result in pollution hotspots, and the setting of polluting land uses in environmental justice communities. A reasonable, proportional amount of ISR/VERA funding should be going directly back into the communities which are going to be faced with the direct impacts of the pollution. This analysis should be in part of the Air Districts Title VI compliance and in compliance with state and federal civil rights laws.³⁰

8. Agricultural Burning

- Open agricultural burning will generally be allowed until 2025, when nearly all such burning will be prohibited. Agricultural burning should be banned earlier than 2025 given the availability of alternatives such as composting or chipping agricultural waste and reincorporating it back into the soil, as well as the massive amount of state funding recently dedicated towards such alternatives.

9. Flaring

- Rule 4311 allows flares from oil and gas wells, which are generally prohibited in some other states. See New Mexico Administrative Code, § 19.15.27, Colorado Rule 903, and Alaska Statutes, § 31.05.095, contain general prohibitions on flaring, subject to limited exceptions. Rule 4311 should bar flaring at oil and gas operations except for emergencies.
- Rule 4311 should include a public notification system to inform the public and residents who live and work within a set radius of the flaring about both planned and unplanned flaring, similar to the South Coast's Rule 1118.³¹

Additional Deficiencies with the SVJ 2022 Ozone Plan

I. The 2022 Ozone Plan Must Consider Climate Change Impacts

³⁰ The air district is also subject to state civil rights laws, including Government Code 11135 and the duty to AFFH (Gov. Code § 8899.50).

³¹ See Generally, SCAQMD, Community Notifications, Rule 1118, available at <https://www.aqmd.gov/home/rules-compliance/compliance/r1118/community-notifications>.

The Valley Air District must account for climate change in its Ozone Plan. Climate change worsens the effects of ozone pollution, and contributes to additional ozone formation,³² with “extreme climate-related effects...already exacerbating the outstanding public and environmental health issues in the San Joaquin Valley, increasing temperature-related deaths and illness, drought and flood-related spread of disease, and worsening air quality.”³³ The District must adopt and enforce measures to reduce emissions, particularly at major stationary sources, particularly in disproportionately impacted environmental justice communities. The Air District’s plan should look at reducing overall GHG emissions to help lessen the effects of climate change, thus lessening ozone formation.

II. The 2022 Ozone Plan Must Contain Contingency Measures

The Valley Air District and CARB must develop contingency measures that will go into effect if we fail to achieve attainment or make reasonable further progress.³⁴ Currently, the Plan does not include any contingency measures. The agencies cannot continue to ignore this vital element of the plan, especially in a region where SIPs have repeatedly failed. A “Plan B” as encompassed in contingency measures that will achieve at least 3 percent of baseline emissions – EPA’s long-standing interpretation -- is not only required but vital to ensure progress toward clean air. The Clean Air Act requires the District adopt contingency measures that will take effect without any further action by the District or EPA upon a failure to make Reasonable Further Progress or attain the 2015 8-hour ozone standard.³⁵ The 2022 Ozone Plan dedicates an entire chapter to rhetoric arguing that the District and CARB cannot propose one or a combination of contingency measures to achieve the three percent required contingency of 9.78 tons per day of VOC and 6.97 tons per day of NOx.³⁶ These protestations ignore the purpose of contingency measures: reductions above and beyond that which should provide for attainment as expeditiously as practicable. Such measures by their nature must represent a more exacting standard than what the District has become accustomed to adopting in its failed attainment plans. The contingency measure rhetoric does not match the opportunity to achieve additional reductions from one or several source categories. The District and CARB cannot and should not simply throw up its hands but must instead develop those measures that would meet the

³² EPA, How Climate Change May Impact Ozone and Public Health in the 21st Century, available at <https://www.epa.gov/sciencematters/how-climate-change-may-impact-ozone-pollution-and-public-health-through-21st-century#:~:text=Higher%20levels%20of%20GHG%20emissions,other%20respiratory%20and%20cardiovascular%20conditions>.

³³ Angel Santiago Fernandez-Bou et al., San Joaquin Valley Region Report for California's Fourth Climate Change Assessment. Pg. 59. Available at https://www.energy.ca.gov/sites/default/files/2022-01/CA4_CCA_SJ_Region_Eng_ada.pdf

³⁴ CAA section 172(c)(9).

³⁵ Id.

³⁶ See generally, Chapter 5: Incremental Progress.

requirement Congress established to protect public health especially given the District's and CARB's history of failing to attain the standards by the deadlines.

We and other commenters have provided the Air District and CARB with several ozone reducing emissions strategies and regulations that could serve as effective contingency measures. The idea no contingency measures exist is preposterous and ignores the public engagement process.

III. The 2022 Ozone Plan Must Control VOC Emissions

The District and CARB should revisit its NO_x-limited reduction strategy and achieve much greater reductions of VOC. At the present time, the District blames NO_x emissions from wildfires for ozone exceedances when the District's policy allows for abundant VOC to remain in the air basin and available for ozone formation during fire season. Wildfires are not simply natural events, but the product of human-driven forest management and human-caused climate change, and should not be simply treated as exceptional events for ozone or PM_{2.5} purposes. Emissions from wildfires should be included in determining attainment. By excluding wildfire emissions, a false reality about the air quality in the Valley is created, a reality which fails to warn and protect residents. The 2022 Ozone Plan should thus more stringently limit VOCs to ensure wildfire NO_x emissions do not interfere with attainment.

IV. The Valley's Ozone SIP Fails to Comply with the CAA's Heightened Extreme Nonattainment Requirements.

The Valley's ozone SIP is subject to heightened requirements due to its extreme nonattainment with the ozone standards.³⁷ The 2022 Ozone SIP does not currently comply with several of these requirements, including but not limited to containing contingency measures, having enhanced air monitoring, and adoption of an enhanced vehicle inspection and maintenance program. Additionally, SIPs are required to include enforceable emission limitations and other control measures, means, or techniques as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.³⁸ Some of the Air District rules have loopholes and exemptions which allow for additional

³⁷ 42 U.S.C. § 7511-7511f.

³⁸ 42 U.S.C. § 7410(a)(2)(A).

emissions to occur.³⁹ These regulations must be amended and strengthened to limit emissions, so that the Valley can reach a health ozone level.

Further, the CAA requires SIPs to include a program to provide for the enforcement of the measures and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.⁴⁰ The Air District in its Ozone Plan must include strong enforcement measures and guidelines, to ensure that its rules and regulations will be followed and enforced. Enforcement should target historic bad actors, and ensure protections for communities most burdened by air pollution.

V. The 2022 Ozone Plan Must Comply with State and Federal Civil Rights Laws

Section 110(a)(2)(E) of the Clean Air Act requires states to provide assurances that the State has the adequate personnel, funding, and authority to carry out the 2022 Plan, and “is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof.” 42 U.S.C. § 7410(a)(2)(E). At the same time, EPA has the affirmative obligation to enforce Title VI of the Civil Rights Act which prohibits discrimination by institutions that utilize federal funds. 42 U.S.C. §§ 2000d, 2000d-1.

Section 601 of the Civil Rights Act provides that no person shall, “on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity” covered by Title VI. *Id.* Section 602 authorizes and directs federal agencies that provide federal financial assistance to issue regulations to effectuate the anti-discrimination provisions of Title VI. *Id.* at § 2000d-1. Pursuant to section 602, EPA promulgated regulations prohibiting EPA funding recipients from engaging in discrimination. *See* 40 C.F.R. §§ 7.30 and 7.35. EPA thus has the affirmative obligation to ensure that recipients of federal funding comply with Title VI and EPA’s implementing Regulations. EPA has interpreted section CAA § 110(a)(2)(E) to include a requirement to demonstrate compliance with Title VI, and that “the Civil Rights Act issues and the Clean Air Act approvability are intertwined.”⁴¹

Thus, the Air District and CARB are required under both the Clean Air Act and Title VI itself, to demonstrate that the state’s implementation plan, including the 2022 Ozone Plan,

³⁹ See previous recommendations on improved rules; *see also*, September 17, 2019 Comment Letter to California Air Resources Board, Board Members and Staff CC: San Joaquin Valley Air Pollution Control District, Regarding Revisions to the SJV PM2.5 SIP.

⁴⁰ 42 U.S.C. § 7410(a)(2)(C).

⁴¹ *See*, Letter from David Howekamp to Michael Kenny, (Dec. 23, 1997).

complies with Title VI. Neither the proposed rule nor the Technical Support Document contain any discussion or consideration of section § 110(a)(2)(E). As outlined earlier, the Air District and CARB’s failure to adopt available measures to achieve air emissions reductions necessary to achieve health-based NAAQS, including the ozone standard, disproportionately adversely impacts Black, Latino, Indigenous, people of color, and other protected classes in the Valley. These groups are disparately impacted by higher concentrations of air emission sources, including ozone precursors, like high volume roadways, industrial facilities, large scale dairies and agriculture. They also face heightened vulnerabilities to the impacts of air emissions and ozone. These choices must be analyzed in the context of Title VI and other civil rights laws.⁴²

VI. The 2022 Ozone Plan Must Incorporate Public Feedback, and Better Engage the Public

The US EPA defines “environmental justice” as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.⁴³ Meaningful involvement means that: (1) potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

Along with a robust plan coupled with stringent enforcement, the District and CARB must improve their public process to ensure interested parties, especially community members, are able to meaningfully engage in planning processes and receive answers to questions and concerns they have at all workshops, public meetings, and/or hearings. During the October 27th, 2022 workshop District staff refused to provide answers to questions community residents and advocates had and ended the workshop an hour early. Additionally most of the meetings were to provide the public with information about decisions, not to allow the public to engage in the decision making process, it was clear staff had made all the decisions and was there to only provide the public with general information, but not take questions. This is not meaningful

⁴² See also, Cal. Gov. Code § 11135 (“No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state...”).

⁴³ EPA, Learn about EJ, available at [https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20\(EJ\)%20is%20the.environmental%20laws%2C%20regulations%20and%20policies](https://www.epa.gov/environmentaljustice/learn-about-environmental-justice#:~:text=Environmental%20justice%20(EJ)%20is%20the.environmental%20laws%2C%20regulations%20and%20policies); see also, 59 Fed. Reg. 7629, Exec. Order No. 12898; see also, Cal. Gov. Code § 65040.12.

involvement. These actions diminish the integrity of a public process. Spanish translation was also not regularly provided. The District should provide simultaneous Spanish translation to support monolingual residents and also comply with Title VI, and other federal and state civil rights laws. The District should also do more to directly engage with communities, like hold public meetings in impacted neighborhoods, and include educational material in accessible languages including, but not limited to Spanish.

Lastly, comments, recommendations, and questions by our organization, residents, and other organizations have not been addressed, incorporated, or responded to sufficiently during the drafting of the 2022 Ozone Plan. As a result, the 2022 Ozone Plan does not reflect community feedback or input.

VII. Conclusion

To meet the 70 ppb ozone standard and all existing ozone standards, the Valley Air District and CARB must take swift action and robust enforcement to restore clean air to the San Joaquin Valley, protect our treasured ecosystems and natural landscapes, and provide overdue relief to environmental justice communities. The current Plan does not demonstrate RFP, adopt all feasible control measures, or comply with state and federal civil rights laws. Unless the Air District and CARB revise the Plan to comply with the CAA, they may be subject to sanctions or other penalties under the CAA.⁴⁴ For the health and safety of the Valley the Air District and CARB must aggressively, and seriously plan out the next 15 years. More of the same will only cement the Valley as one of the most polluted places in the Country.

Sincerely,

Perry Elerts

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⁴⁴ 42 U.S.C. §§ 7410(c), (m); 42 U.S.C. § 7509 (sanctions and consequences of failure to attain).