PLACER COUNTY AIR POLLUTION CONTROL DISTRICT

STAFF REPORT

REVISION TO THE PLACER COUNTY PORTION OF THE 2009 SACRAMENTO REGIONAL 8-HOUR OZONE ATTAINMENT AND REASONABLE FURTHER PROGRESS PLAN FOR THE REMOVAL OF THE CONSTRUCTION MITIGATION RULE (IS-1), OPERATIONAL INDIRECT SOURCE RULE (IS-2), AND ASPHALTIC CONCRETE PRODUCTION RULE (CM-1)

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INTRODUCTION

The Placer County Air Pollution Control District (District) proposes a revision to the Placer County Portion of the 2009 Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan (Plan)¹. The revision will remove the commitment to adopt two indirect source rules (ISR) (IS-1, the Construction Mitigation Rule, and IS-2, the Operational Indirect Source Rule) and one control measure rule, (CM-1, the Asphaltic Concrete Production Rule) for Placer County. This revision will be submitted to the U.S. Environmental Protection Agency as an amendment to the California State Implementation Plan.

The proposed indirect source rules IS-1 and IS-2 would require mitigating emissions from construction, building and use of new land use development projects. The control measure rule CM-1 would require equipment changes to reduce NOx emissions at plants that produce asphaltic concrete. Since the approval of the Plan by the Sacramento Federal Nonattainment Area air districts and California Air Resources Board in 2009, several factors have led the District Staff to recommend the removal of these three control measures from Placer County's Portion of the Plan.

Staff has evaluated the removal of the control measures and commitments and has concluded that it will not change or interfere with the attainment demonstration or reasonable further progress (RFP) demonstration, and does not change the reasonably available control measure (RACM) and contingency measure conclusions.

This staff report reviews the three measures and the legal requirements associated with these measures and this action. The report discusses the reasons for removing these measures from the Plan with an anticipated schedule for reconsideration.

BACKGROUND

Plan Overview

In January and February of 2009, the Governing Boards of the Sacramento Federal Nonattainment Area (SFNA) air districts approved the Plan. The Plan included 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 established an updated emissions inventory, provided photochemical modeling results, proposed adoption of control measures to meet CAA RACM requirements, and set new motor vehicle emission budgets for transportation conformity purposes. The Plan was approved by California Air Resources Board (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.

¹ "Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan", EDCAQMD, FRAQMD, PCAPCD, SMAQMD, YSAQMD, March 26, 2009.

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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 three control rules to be removed, IS-1, IS-2, and CM-1, and their associated emissions reductions were not included in or relevant in any way to the following Plan elements:

- Emissions inventory²
- Motor vehicle emissions budgets³
- General conformity⁴
- Photochemical modeling⁵

Indirect Source Rule IS-1 and IS-2

The existing Plan commits the District to adopting and implementing two control rules that address emissions 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. The term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply, including regulation of existing off-street parking. However it does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources.

The IS-1 Construction Mitigation Rule of the Plan includes a commitment from the District and two other districts in the Sacramento region (Feather River Air Quality Management District and Sacramento Metropolitan Air Quality Management District) to adopt a rule to mitigate emissions generated by equipment used during the construction phase of a land use project. The requirements considered for the rule are based on the District's CEQA mitigation program and

² lbid. Section 5.5 states that the emissions inventory forecasts did not include benefits from measures that had not been adopted by December 31, 2006.

³ lbid. Appendix F only includes regional reductions from on-road mobile incentive strategy. Appendix C control measure descriptions show that there are no on-road emissions reductions from IS-1 and the minimum potential on-road reductions from IS-2 were 0.

⁴ lbid. The general conformity inventory listed in Table 12-1 only includes aircraft and ground support emissions that would not be impacted by IS-1, IS-2, or CM-1.

⁵ lbid. 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.

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the construction requirements from San Joaquin Valley Air Pollution Control District (SJVAPCD) Rule 9510, Indirect Source Review⁶. The proposed measure would require projects to mitigate their NOx emissions by an amount equal to 20% of the statewide average emissions either by using cleaner construction equipment, by modifying the construction equipment (through retrofits, replacements, or post-combustion controls), or by paying a fee that will be used by the District to obtain emission reductions.

The IS-2 Operational Indirect Source Rule which was committed by the District and the Sacramento Metropolitan Air Quality Management District (SMAQMD) would reduce emissions generated during the operational phase of indirect sources. Operational emissions are the combination of area and mobile 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 improved energy efficiency resulting in fewer power plant emissions or reductions in on-site combustion emissions.

Both rules IS-1 and IS-2 would have provided project proponents with the option to use on-site measures, or to pay a fee, which the District would use to provide incentives to off-site emission reduction projects. Off-site mitigation fees would be calculated based on the cost effectiveness (\$ per ton of pollutant reduction) and the amount of mitigating emission reductions required.

Asphaltic Concrete Production Rule CM-1

The existing Plan commits the District to the adoption and implementation of a NOx control rule, CM-1, which would control emissions from dryers used to manufacture asphaltic concrete or hot-mix pavement material. Asphaltic concrete, or hot-mix pavement material, is produced in both continuous and batch plants including portable plants. The process involves heating aggregate in a rotary dryer to approximately 300°F and mixing it with melted asphalt cement refined from petroleum. This measure targets NOx emissions from the burners used to heat the dryer. Associated NOx emissions also come from heaters used to melt asphalt cement, and from internal combustion engines.

The dryer NOx emissions may be controlled by the burners used to heat the dryer. The concentration of NOx discharged from uncontrolled burners is typically over 100 parts per million, volumetric dry (ppmvd) @ 3% O2, or about 0.016 pounds per ton of production. This measure would consider the use of low NOx burners and flue gas recirculation (FGR) to reduce these emissions. The proposed requirements were based on Rule 4309 – Dryers, Dehydrators, and Ovens which was adopted by the San Joaquin Valley Unified APCD in December 2005 and applies to dryers at asphaltic concrete plants. The District and the SMAQMD committed to adopt this rule in the Plan.

⁶ 42 USC 7410(a)(5)(C) ⁷ 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.

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Proposed Emissions Reduction in the Plan

The Plan includes commitments for the District to adopt measures to control emissions of NOx and VOC from indirect sources due to both construction (IS-1) and operational (IS-2) activities and emissions of NOx generated from asphaltic concrete plants (CM-1). The emissions reduction estimates in the Plan are 0.046 tons per day of NOx for IS-1, 0~0.04 tons per day of NOx and 0~0.01 tons per day of VOC for IS-2, and 0.036 tons per day of NOx for CM-1, as shown in the following table⁷:

	VOC	NOx
	(tons per day)	(tons per day)
IS-1 (Construction Mitigation Rule)		0.0462
IS-2 (Operational Indirect Source Rule)	0 ~ 0.01	0 ~ 0.04
CM-1 (Asphaltic Concrete Production)		0.036
Total	0 ~ 0.01	0 ~ 0.122

Changes since the Plan Approval

Since the approval of the Plan by the air districts within the SFNA, several factors have led Staff to recommend the proposed revision for the Plan.

1. **Economic downturn** – The global recession has caused a loss in employment and revenue in the construction sector and other industries that would be affected by the implementation of control rules IS-1, IS-2, and CM-1. This has reduced business activity and has strained the financial ability of industry to comply with regulations. The reduction in business activity has also resulted in reduced vehicle activity and associated emissions that may change the emissions inventory.

The US Department of Commerce lists housing starts or residential building permits issued as one of the top 12 economic indicators⁸. Housing starts and permits issued also indicate the strength of the building and construction industry. New single-family home permits issued in Sacramento metropolitan area have decreased by 81% from 2006 to 2010⁹, an indicator of the severity with which the construction and building industry in Sacramento County has been struggling. Unemployment is another indicator of the economy's strength. As of December 2010, California has the second highest unemployment rate in the nation at 12.5% ¹⁰. The Sacramento Metropolitan area also has an unemployment rate of 12.5% as of December 2010. Specifically in Sacramento County, employment in the construction industry has decreased by 41% (a loss of 18,600

⁷ "Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan", EDCAQMD, FRAQMD, PCAPCD, SMAQMD, YSAQMD, March 27, 2009 Appendix C pages C57-C65and C127-128.

⁸ Economics and Statistics Administration, US Department of Commerce, Accessed April 2011 http://esa.doc.gov/about-economic-indicators

⁹ Construction Industry Research Board, 2006, 2010 (cited by California Building Industry Association), http://www.cbia.org/go/cbia/newsroom/housing-statistics/housing-starts/

Bureau of Labor Statistics, accessed January 2011, http://www.bls.gov/lau/

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employees) from 2005 to 2009¹¹. These indicators suggest that the construction and building industry is currently less able to bear the increased costs from ISR rules.

2. **EPA responses to SJVAPCD Rule 9510** – The mitigation requirements that are considered for the proposed control rule IS-1 are based on the construction portion of SJVAPCD Rule 9510 Indirect Source Review. Currently, SJVAPCD Rule 9510 is the only air district indirect source rule to address emissions from construction equipment. The SJVAPCD rule requires projects to mitigate their construction equipment's NOx emissions by an amount equal to 20% of the statewide average emission rates. Project proponents may meet these goals by using cleaner construction equipment, by modifying the construction equipment (through retrofits, replacements, or post-combustion controls), or by paying a fee that will be used by the district to obtain emission reductions.

Recently, EPA reviewed SJVAPCD Rule 9510 and released a technical support document (TSD) for the rule in May 2010¹². The TSD focused on two approvability issues with Rule 9510. First, the EPA felt the rule needed to better outline how mitigation measures would be enforced and verified. Second, SJVAPCD needed to demonstrate to the EPA how the off-site mitigation program would follow the EPA's Economic Incentive Programs guidelines. This would require the off-site mitigation program to include criteria, policies, and procedures to ensure that the 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. EPA staff recommended approval of Rule 9510 into the State Implementation Plan (SIP) on the condition that the emission reductions claimed by the rule not be credited towards any attainment or rate of reasonable further progress demonstration because it does not fully comply with the EPA's approvability criteria and policies.

3. **Proposition 26** – In November 2010, California voters passed Proposition 26, which requires that certain state and local fees be approved by two-thirds vote. The Proposition 26 requirements may apply to the mitigation fees that were proposed in control measure IS-1 and IS-2. If Proposition 26 applies then the mitigation fee would need to be approved by two-thirds of the voters in Placer County. Although the proposed control measures only anticipate very small emission reductions, a total of 0.09 tons/day of NOx, there is no guarantee that two-thirds of the voters would approve the fee.

LEGAL MANDATES

Clean Air Act Plan Requirements

The District is part of the SFNA, which is designated as a "severe" nonattainment area for the

¹¹ lbid, http://www.bls.gov/cew/data.htm

¹² 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.

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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:

- 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) 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^{13,14} 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.
- <u>Contingency Measures.</u> 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 air districts of the SFNA adopted the Plan to demonstrate the SFNA would 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 Control Measures from the Plan

Section 110(l) of the CAA requires that each revision to a SIP be adopted after reasonable notice and a 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 attainment plans to include indirect source review programs as a condition of approval.

Staff is proposing to revise the State Implementation Plan to remove proposed control rules IS-1, IS-2 and CM-1 from Placer County's portion of the Plan. In addition, the other air districts in the Sacramento Region with these control rule commitments may request removal of their

¹³ "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 2" (Federal Register, November 29, 2005, p. 71659-71661).

¹⁴ "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas" (EPA, December 1999).

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commitments. For example, the Sacramento Metropolitan Air Quality Management District is removing IS-1 and CM-1, among other measures, from Sacramento County's portion of the Plan. If all the air districts revise their portions of the Plan, by removing these measures, the Plan still complies with Clean Air Act Section 110 (l) requirements because:

- the SIP revision will be adopted after 30 day notice and public hearing;
- the SIP revision does not change the attainment demonstration or interfere with attainment or RFP demonstration;
- the SIP revision does not change the RACM conclusions as the control measures removed from the Plan do not advance the attainment date for the Sacramento region due to the insignificant amount of emissions reductions potentially generated;
- 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 ¹⁵ establishes 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 before the end of 2008 achieved this minimum emissions reduction target ¹⁶. The Plan stated that the new control measures are included to meet CAA requirements for RACM¹⁷. The IS-1 Construction Mitigation Rule, IS-2 Operational Indirect Sources Rule, and CM-1 Asphaltic Concrete Production Rule were not adopted before the end of 2008 and were not relied on to demonstrate attainment. Therefore, these three proposed control rules can be removed from the Plan for any or all air districts 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 ¹⁸. Therefore, revising the Plan to remove the commitment to adopt IS-1, IS-2, and CM-1 control measures in any or all air districts 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 the RFP, they were required to satisfy the RACM requirement ¹⁹. To be conservative, Staff analyzed whether removing the total potential emissions reductions from proposed control rules IS-1, IS-2, and CM-1 from the Plan (up to 0.3 tpd NOx combined) would change the RACM

¹⁵ "Sacramento Regional 8-Hour Ozone Attainment Demonstration and Reasonable Further Progress Plan, March 26, 2009." Table 8-1, Line L, page 8-5.

¹⁶ lbid. Table 8-1, Line N.

¹⁷ lbid. Page 8-2.

¹⁸ lbid, Section 13.5, page 13-4, and Table 13-1, Lines 4 and 13 page 13-5.

¹⁹ CAA Section 172(c)(1) and Section 181(a)(1), and 40 CFR 51.912(d).

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conclusions. Staff concluded that IS-1, IS-2, CM-1, and all other available control measures that are not included in the Plan collectively would not advance the attainment date or contribute to the RFP for the Sacramento Region due to the insignificant amount of emission reductions potentially generated. Therefore, the Plan may be revised to remove IS-1, IS-2, and CM-1 commitments without changing the conclusion that the Plan meets RACM requirements.

Contingency Measures

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 the Reasonable Further Progress (RFP) milestones or fails to attain 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 demonstration²⁰. The 3% contingency measure requirement was met for the demonstration and did not include the reductions associated with IS-1, Is-2 and CM-1. As a result, removal of these measures 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, the EPA set a new 8-hour ozone standard of 0.075 parts per million (ppm). This standard is currently under reconsideration, with the EPA is proposing a revision to the standard in the range of 0.060 to 0.070 ppm (75 FR 2938, January 19, 2010). EPA's current timeline was to finalize the new standard by July 29, 2011(but recently delayed until September 2011) and complete nonattainment area designations by July 29, 2012. If the EPA meets this timeline then the deadline for submitting plans to the EPA for attaining the new standard will be in mid-2014. The District will consider potential measures to achieve the revised 8-hour ozone standard. The construction mitigation measure, operational indirect resource control measure, and asphaltic concrete NOx control measures will be re-evaluated at that time.

REASONS FOR REMOVAL

Control Measure IS-1 and IS-2

There are three primary reasons Staff recommends removing control measure IS-1 and IS-2 from the Plan.

1. Uncertainties whether still necessary – One of objectives for these two proposed control rules was to allow the District to require and implement the standard air quality mitigation measures consistently for all land use development projects in Placer County. Recently, the District has worked with local jurisdictions to update and streamline the District's CEQA mitigation program. This has resulted in lead agencies implementing similar mitigation requirements under CEQA which have generally been as effective a mechanism for achieving emissions reductions from land use development projects. Moreover, the District is working with the other air districts in Sacramento Region to establish a regional

²⁰ "General Preamble for Implementation of Title 1 of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992) and "2009, Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan, March 26, 2009." Section 7-21, p7-32.

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GHG (green house gas) significant threshold for CEQA review. Once the proposed regional GHG significant threshold is established, the mitigation measures identified for the GHG emission mitigation will be beneficial to reduce the criteria pollutant emissions from the land use development. This would be unnecessary as it is a duplication of efforts from the CEQA mitigation program with the implementation these two proposed control rules.

In addition, the emission estimation for construction equipment could be substantially lower than the previous estimation. In 2010 the CARB released new emissions estimates for off-road equipment showing that between 2005 and 2010, construction emissions dropped by more than 50 percent²¹. Since the construction equipment that would be regulated by control rule IS-1, are subject to CARB's *In-Use Off-Road Diesel Vehicles Regulation*²², this emissions change would suggest that the benefits from control rule IS-1 may have been overestimated and that there may not be additional emissions reductions. These emissions changes will be reflected in the next ozone plan evaluations and will help staff determine whether the potential ISR rules are needed to meet the upcoming revised federal ozone air quality standards.

Furthermore, the CARB adopted the regional GHG emissions targets for passenger vehicles, under SB 375's requirement for the state's 18 Metropolitan Planning Organizations (MPOs), in September 2010. Each MPO, including the Sacramento Area Council of Governments (SACOG), will prepares a "sustainable communities strategy (SCS)" that demonstrates how the region will meet its GHG reduction target through integrated land use, housing, and transportation planning to reduce vehicle miles traveled (VMT) and to promote the use of alternative transportation. Although the primary purpose of creating SCS is to reduce GHG, the SCS design principles can also reduce VOC and NOx emissions concurrently. Achieving the reductions by implementing SB 375 may reduce the need for requiring reductions through the implementation of control rule IS-2.

2. **Potential cost impacts** – Implementing the IS-1 and IS-2 rules would require additional staff resources and training for project evaluation, monitoring, and enforcement along with establishing an off-site mitigation program. An off-site mitigation program could include providing incentives for engine/vehicle turnover or fireplace replacement, or prompting planning mechanisms/project designs to encourage mixed use design projects, infill projects, and other smart growth strategies. The EPA requires that the off-site mitigation program meet its Economic Incentive Programs guidelines. This would require District staff to develop new criteria, policies, and procedures to ensure that an off-site mitigation project's emission reductions are surplus - Such a program would need to be easily accessible, have transparent tracking. The costs to meet EPA guidelines are unknown at this time. Some of these costs may be avoidable if ISR (or the two rules IS-1 and IS-2) is

²¹ CARB, "Staff Report: Initial Statement of Reasons for Proposed Rulemaking. Proposed Amendments to the Regulation for In-Use Off-Road Diesel-Fueled Fleets and the Off-Road Large Spark-Ignition Fleet Requirements." December 16, 2010.

²² California Code of Regulations Title 13, Section 2449 et seq.

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removed as a SIP commitment. The District may not be able to absorb these additional costs without passing them on to project proponents in the form of fees. With the passing of Proposition 26 in 2010 voter approval is required to establish new fees. This may impact the District's ability to recover the increased costs on project proponents. It is unclear whether fees that cover the rule implementation could be established under Proposition 26. The District cannot implement these two control rules without additional resources.

If IS-1 and IS-2 rules are adopted, project developers would incur additional compliance costs with the rule requirement including an administrative cost and an off-site mitigation fee. Although many land use development projects in Placer County may already be subject to off-site mitigation fees under the District's CEQA mitigation program, the implementation of these proposed control rules could affect additional projects in paying off-site mitigation fees. Those fees would add financial burdens to an already struggling construction and building industry.

3. Potential emissions reductions – Recently, CARB revised emissions estimates from construction equipment use which is lower than previous estimates in the Plan. Part of this change in the emissions estimates is due to the region's economic downturn. This revision has caused a significant decrease in the estimated emissions from off-road equipment. The estimate for the 2018 construction and mining NOx inventory for the Sacramento nonattainment area has decreased approximately 50%. The same situation has also happened on the on-road mobile emission inventories. CARB reports that NOx and VOC emissions from on-road diesel trucks have and will decrease by 35% in 2010, 17% in 2014, and 20% in 2020 as compared to the emissions estimated by the EMFAC2007 model. In addition, as discussed above, SB375 GHG reduction targets may achieve ancillary VOC and NOx reductions in the Sacramento nonattainment area. These changes may indicate the emission reduction potential of IS-2 is lower than the estimation in the Plan but revised reductions cannot be quantified at this time.

As noted in the previous discussion, EPA's concerns that the emission reductions claimed by these two rules could not be credited towards any attainment or rate of reasonable further progress demonstration unless the District can successfully develop an off-site mitigation program which meets those EPA requirements. Thus it would be challenging for the District to implement these two control rules with emissions reduction which cannot be used for attainment or progress purposes.

Control Measure CM-1

The proposed CM-1 Asphaltic Concrete Control Rule would require equipment retrofit to reduce NOx emissions at plants that produce asphalt. There are two reasons staff recommends removing control measure CM-1 from the Plan.

1. **Potential emission reduction** – The NOx emissions and potential reduction from the measure's implementation would be lower than the Plan's estimation. The Plan used 2002

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emission data to estimate the emissions in 2018 with the emission reductions occurring in 2018 when the measure is adopted and implemented. However, the economic downturn has caused a decrease in construction activities along with a reduction in the production of asphaltic concrete. There are two existing asphalt batch plants permitted by the District. According to their facility throughputs, the production of asphaltic concrete has dropped over 50% from 2005 to 2010; one of two existing facilities was closed in 2010. The economic downturn is not showing signs of a reversal²³. Therefore, the NOx emission estimates from asphaltic concrete in 2018 could be decreased from 0.0624 tpd to 0.0312 tpd if using 50% as the decreasing rate; and the potential reduction from the implementation of asphaltic concrete rule could be revised from 0.0364 tpd to 0.0182 tpd in 2018.

2. **Potential cost impact** – The Plan estimated the cost effectiveness of NOx control for asphaltic concrete plants in a range from \$17,600 to \$42,300 per ton of NOx reduced. However, the cost effectiveness for the rule implementation increases due to the potential emission reduction decreases caused by the economic downturn. The cost effectiveness would be increased up to \$84,600 per ton of NOx reduced, which may make the measure economically infeasible.

According to the above discussion, staff recommends removing IS-1, IS-2, and CM-1 control rules from the District commitment so the Plan will more clearly represent the emissions reduction strategies which may be used for meeting future attainment goals or progress purposes.

ENVIRONMENTAL REVIEW AND COMPLIANCE

The Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan (Plan) included new regional and local control measures as part of the Plan. The measures committed to by the District include IS-1 (Construction Mitigation Rule), IS-2 (Operational Indirect Source Rule0, and CM-1 (Asphaltic Concrete 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)²⁴, filed on January 23, 2009, concluded that the Plan would have no significant adverse environmental impacts.

The District evaluated the removal of IS-1, IS-2, and CM-1 rules under CEQA since removal of these measures is a discretionary action undertaken by a public agency²⁵. As discussed in the Plan Overview section of this report, emission reductions associated with IS-1, IS-2, and CM-1

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²³ California Economic Forecast Annual Report, California Department of Finance, April 2011 http://www.dof.ca.gov/HTML/FS DATA/LatestEconData/FS Forecasts.htm

²⁴ Final Environmental Impact Report, Sacramento Regional Non-Attainment Area 8-Hour Ozone Attainment and Reasonable Further Progress Plan, State Clearinghouse No. 2006102136, Sacramento Metropolitan Air Quality Management District, December 2008

²⁵ Public Resources Code, State of California 21065(a).

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rules 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 these measures do not change or alter the Attainment Demonstration, the Reasonable Further Progress demonstration, the Reasonably Available Control Measures, or Contingency Measures conclusions in the Plan and the Plan EIR. Rather, as discussed in the Plan and FEIR, the additional measures provide a safety margin to insure attainment in the unlikely event that existing proposed measures were not fully adopted or implemented.

In addition, these rules were identified as RACMs. The RACM analysis identified these rules that were not included in the Plan because they did not advance attainment date when they are considered either individually or collectively with the other measures. When the IS-1, IS-2, and CM-1 control rules are considered in conjunction with those excluded measures identified by the Plan's RACM analysis, the measures still do not advance attainment date and therefore should not have been included in the Plan. The remaining Plan measures after removal of IS-1, IS-2, and CM-1 still satisfy the RACM requirement and provide an adequate safety margin towards attainment. 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. By definition, a margin of safety provides for contingencies, in this case, where the measure is not adopted or achieves fewer reductions than anticipated. The possibility that the IS-1, IS-2, and CM-1 rules would not be adopted was considered in the Final EIR.

This proposed Plan revision does not result in any changes to the previous EIR. 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 COMMENTS

The Placer County Air Pollution Control District's Board of Director's will hold a public hearing to discuss the proposed amendments. Public notices were published in the newspaper, and posted on the District's website (Attachment 1). The proposed revisions to the Plan and the staff report were available for public review.

CONCLUSION

The District proposes a Plan revision to remove the commitment to adopt three control rules (IS-1 Construction Mitigation Rule, IS-2 Operational Indirect Source Rule, and CM-1 Asphaltic Concrete Production Rule) for Placer County. The control rules IS-1 and IS-2 would require mitigating emissions from construction, building and use of new land use development projects. The control rule CM-1 would require equipment changes to reduce NOx emissions at asphalt

²⁶ Final Environmental Impact Report, Sacramento Regional Non-Attainment 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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plants. Since the Plan's original approval, several factors have led Staff to recommend removing these three control rules from the Plan and to consider re-evaluating them at a later time.

The key reasons for removing these three control measures from the Plan include:

- 1. Uncertainties whether still necessary The lead agencies in Placer County are implementing similar mitigation under CEQA as proposed by the IS-1 and IS-2 control rules. The District is working with the other air districts in Sacramento Region to establish a regional GHG significant threshold for CEQA review. These CEQA related efforts would assist the District in achieving the reductions proposed by the IS-1 and IS-2 control rules. In addition, the emissions from off-road equipment have been substantially decreased as identified by the CARB's recent evaluation, which could affect the potential reduction from IS-1 rule implementation. Furthermore, the adopted regional GHG emissions targets under SB 375 requirements can be more beneficial in achieving the goal of IS-2 rule which would reduce VOC and NOx mobile emissions from land use development projects. Therefore, it may not be necessary to duplicate the efforts by implementing the proposed IS-1 and IS-2 control rules.
- 2. **Potential cost impacts** Implementing IS-1 and IS-2 control rules would require additional District resources to establish a quantifiable off-site mitigation program under EPA requirements along with imposing added costs on developers from additional administrative costs and potential mitigation fees. Implementing the CM-1 control rule may impose additional costs on the facility owners with the potential cost-effectiveness economically infeasible. In addition, Proposition 26 may limit the District's ability to recover costs due to the need for voter approval for a new fee regulation. Therefore, there would be potential significant financial impacts for both the District and targeted groups when implementing these three rules.
- **3. Potential emission reductions** The economic downturn has caused the potential emission reductions to be less than what the Plan estimations were from the implementation of these three control rules. In addition, the EPA may not agree with the emission reductions from the implementation of IS-1 and IS-2 rules as creditable toward attainment or progress goals unless accompanied by an off-site mitigation program qualified by EPA guidelines. This would result in significant financial impacts to the District operation.

The proposed revision to the Plan to remove control measure IS-1, IS-2, and CM-1 complies with the CAA because it does not change the attainment demonstration, interfere with attainment, or change the RFP demonstration. In addition, the Plan revision does not change the RACM conclusions for removing those control measures since their emissions reductions would be considered insignificant and does not help to advance the region towards the attainment date.

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Staff would consider re-evaluating the control measure IS-1, IS-2, and CM-1 as part of the process to evaluate and identify potential control strategies to meet future federal revised air quality standards. We anticipate that work to occur in 2014.

SUMMARY OF CHANGES

Staff is proposing to amend the 2009 Sacramento Regional 8-Hour Ozone Attainment and Reasonable Further Progress Plan by removing IS-1 Construction Mitigation Rule, IS-2 Operational Indirect Source Rule, and CM-1 Asphaltic Concrete Production Rule. The amendments will include all related changes to the attainment demonstration and RACM analysis. These changes to the Plan are in Chapters 1, 7, and 14, and its Appendices C and H. To clearly show the changes being made, deleted language is shown in strikeout format and new language is underlined as the Attachment 2.

Attachment 1: Notice of Public Hearing and Proof of Publication

Attachment 2: Strikeout Version of Revision to the Placer County Portion of the 2009 Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan for the Removal of Construction Mitigation Rule (IS-1), Operational Indirect Source Rule (IS-2), and Asphaltic Concrete Production Rule (CM-1).

ATTACHMENT 1

SUBJECT

Notice of Public Hearing and Proof of Publication

ATTACHMENT #2

SUBJECT:

Strikeout Version of Revision to the Placer County Portion of the 2009 Sacramento Regional 8-hour Ozone Attainment and Reasonable Further Progress Plan for the Removal of the Construction Mitigation Rule (IS-1), the Operational Indirect Source Rule (IS-2), and the Asphaltic Concrete Production Rule (CM-1)