



## Legislation Text

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**File #:** 16-0137, **Version:** 1

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Air Quality Management District (AQMD) recommending the Board, acting as the AQMD Board of Directors:

- 1) Approve and authorize the Chair to sign Resolution **038-2016**, approving proposed Rule 523-1 Federal Non-Attainment New Source Review ("Rule"); and
- 2) Direct staff to forward the Rule to the California Air Resources Board for transmittal to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

**FUNDING:** None Required.

### **DEPARTMENT RECOMMENDATION**

The AQMD recommends the Board, acting as the AQMD Board of Directors:

- 1) Approve and authorize the Chair to sign Resolution 038-2016, approving proposed Rule 523-1 Federal Non-Attainment New Source Review ("Rule"); and
- 2) Direct staff to forward the Rule to the California Air Resources Board (CARB) for transmittal to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan (SIP).

### **DISCUSSION/BACKGROUND**

In October 2006, the US Environmental Protection Agency (EPA) promulgated a new 24-hour PM<sub>2.5</sub> ("Particulate Matter" <2.5 microns) National Ambient Air Quality Standard (NAAQS) strengthening the standard from 65µg/m<sup>3</sup> (micrograms per cubic meter) to 35µg/m<sup>3</sup>. In December 2009, the EPA designated a multi-county Sacramento region, including Western El Dorado County, in "non-attainment" of this new standard.

The region's PM<sub>2.5</sub> monitoring data showed that the 2006 24-hour PM<sub>2.5</sub> NAAQS was met by December 31, 2011. In May 2012, the CARB submitted a request that EPA find the Sacramento region in attainment for the standard. EPA issued a proposed rule for Determination of Attainment on October 26, 2012 and a final rule for Determination of Attainment on July 15, 2013. The final rule became effective on August 14, 2013. While the Determination of Attainment finding relieved the Sacramento region air districts from various planning requirements, it did not relieve the AQMD of the requirement to submit a PM<sub>2.5</sub> New Source Resource (NSR) rule. The AQMD can only be relieved of the NSR program requirement if EPA re-designates the AQMD to attainment. Re-designation to attainment requires the Sacramento region submittal and EPA approval of a maintenance plan demonstrating attainment will be maintained over the next 10 years.

On December 3, 2013 the AQMD adopted a PM<sub>2.5</sub> Implementation/Maintenance Plan and Redesignation Request for Sacramento PM<sub>2.5</sub> Nonattainment Area. However, the Sacramento region exceeded the 35µg/m<sup>3</sup> standard by 0.1µg/m<sup>3</sup> on the last day of 2013 at one monitoring site in Sacramento. Therefore, the request for EPA to re-designate the regional area to attainment was delayed.

EPA is now allowing the use of data for the following year (2014) to be considered. The Sacramento region had a 'clean' year in 2014. Sacramento Metropolitan Air Quality Management District

(SMAQMD), as the lead air district, began to prepare the new re-designation request in early 2015, but that has not yet been completed. Re-designation to attainment would relieve AQMD from the need to adopt 523-1 to include PM2.5 in the NSR program.

However, on October 8, 2015, the Center for Biological Diversity et al. filed a lawsuit against the EPA asserting EPA had failed to make findings of failure to submit (FFS) for nonattainment SIPs for the 2006 PM2.5 standard for multiple areas throughout the United States. EPA is now in the process of negotiating a consent decree in which EPA will likely agree to issue a FFS by the beginning of April 2016. If the AQMD adopts and submits Rule 523-1 prior to EPA's issuance of a FFS, then EPA will not include El Dorado County in the FFS.

By adopting this Rule, AQMD will avoid new submittal dates, new and expanding businesses will not be faced with a sanction requiring the purchase of offsets, and the County will not face the potential loss of Federal highway funds due to the imposition of a highway sanction. Section 179 of the Clean Air Act (CAA - 42 USC 7509) requires automatic offset and highway sanctions when a requirement of an approved SIP is not being implemented. The highway sanction is a prohibition on the disbursement of Federal funds for transportation projects within an area, except for certain safety, transit and air quality beneficial projects. Section 110 allows EPA to apply sanctions at any time after making a finding that a CAA provision has not been met.

The current SIP-approved NSR Rule 523 is the original NSR Rule adopted by the AQMD on April 26, 1994. Adopting Rule 523-1 would add PM2.5 as a regulated NSR pollutant. It will include requirements for Lowest Achievable Emissions Rate (LAER), offsets, and major source and major modification thresholds for that pollutant. Adoption of Rule 523-1 will also ensure that the AQMD has a current NSR program for ozone precursors (VOC, also referred to as ROC for reactive organic compounds and NOx, Nitrogen Oxides) which satisfies all federal requirements for a severe ozone nonattainment area.

Rule 523-1 also contains a provision that the rule only applies to pollutants for which EPA has designated the AQMD as not attaining a NAAQS. Therefore, when AQMD is re-designated to attainment of the PM2.5 or ozone NAAQS, this rule will no longer apply to those pollutants.

Rule 523 already controls the PM2.5 precursors VOC and NOx at levels below those required by federal law. Therefore, the inclusion of VOC/ROC and NOx controls in proposed Rule 523-1 will not result in any new requirements.

As required by the federal Clean Air Act, areas that do not attain the federal ambient air quality standards for PM2.5 must have a New Source Review Rule included in the State Implementation Plan that contains measures to control PM2.5 emissions from major sources. In order to avoid being included in EPA's forthcoming Failure of Finding to Submit, AQMD recommends adoption of proposed Rule 523-1. There are no existing sources or foreseeable sources to which the Rule 523-1 would apply, and once the region achieves attainment of the NAAQS, the Rule will no longer apply.

## **ALTERNATIVES**

The Board could choose to not adopt the Rule. This is the alternative chosen by the Yolo-Solano Air Quality Management District (YSAQMD). YSAQMD staff decided not to develop and present a similar Rule to their Board, after determining the staff time required was not warranted because federal sanctions or further litigation are unlikely. AQMD staff prepared and are proposing adoption

of this Rule, having determined it prudent action to do so.

**OTHER DEPARTMENT/AGENCY INVOLVEMENT**

County Counsel approved the Resolution

**CAO RECOMMENDATION**

Chief Administrative Office concurs with staff's recommendations.

**FINANCIAL IMPACT**

Rule adoption and implementation are unlikely to create any significant financial impacts for staff or for the business community. Failure to adopt the Rule could negatively affect the future receipt of Federal highway funds, thereby reducing the availability of such funds for future County program use.

**CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) Clerk to obtain the Board Chair's signature on three (3) original Resolutions, and
- 2) Clerk to provide AQMD with two (2) signed copies of the Resolution to be forwarded to the California Air Resources Board.

**STRATEGIC PLAN COMPONENT**

Healthy Communities

**CONTACT**

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