

submit updates made by the state to its LEV Program rule. Specifically, this SIP revision includes changes made by Maryland to regulation .02 Incorporation by Reference under COMAR 26.11.34. This regulatory revision was adopted by Maryland on April 14, 2011 and became effective in Maryland on May 16, 2011. The purpose of the SIP revision including this rule revision was to update Maryland's incorporation by reference to be consistent with changes made by California to its LEV rules. Since the time that Maryland initially adopted California's rules in 2007, California had updated its rules to: improve on-board diagnostic and emission standards for testing vehicles; adopt standards for testing plug-in hybrid electric vehicle conversions; and to adopt the national GHG emissions standards framework agreement between the EPA, NHTSA, and CARB. Although the changes made by California (and the resulting changes made by Maryland to its incorporation of California's rules by reference) are minimal, they are important for purposes of making sure Maryland's rules are consistent with those of California, in compliance with the requirements for adoption of California standards by other states, per section 177 of the CAA. These changes serve primarily to achieve consistency between Maryland's and California's rules, for purposes of maintaining parity of Maryland's rules with those of California.

II. Proposed Action

EPA is proposing to approve three Maryland SIP revisions submitted to EPA adopting the Maryland Clean Car Program. Maryland adopted California's LEV and ZEV programs, in addition to California's GHG emissions standards for light-duty passenger vehicles and trucks and medium-duty vehicles. Maryland initially submitted the first of these three SIP revisions on December 20, 2007. Maryland subsequently submitted the second of these three SIP revisions to EPA on November 12, 2010, to amend its 2007 SIP revision. Maryland then submitted a SIP revision on June 22, 2011, to amend its earlier SIP revisions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this proposed rule to approve Maryland's Clean Car Program does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 08, 2012.

W.C. Early,

Acting Administrator, Region III.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2010-1078; FRL-9717-7]

Revision to the South Coast Portion of the California State Implementation Plan, CPV Sentinel Energy Project AB 1318 Tracking System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is supplementing our prior proposal to approve a source-specific State Implementation Plan (SIP) revision and requesting public comment on additional information we are adding to our docket to revise the South Coast Air Quality Management District (District or SCAQMD) portion of the California SIP. This source-specific SIP revision is known as the CPV Sentinel Energy Project AB 1318 Tracking System ("AB 1318 Tracking System"). We are supplementing our proposed approval of this SIP revision to provide additional information and request comment on three issues: (1) the District's quantification of the offsets it transferred to the AB 1318 Tracking System; (2) the District's surplus adjustment of the offsets in the AB 1318 Tracking System; and (3) which District Air Quality Management Plan (AQMP) is appropriate for determining the base year to evaluate the availability of offsets from shutdown sources.

DATES: Comments on this Supplemental Notice of Proposed Rulemaking (NPRM) must be submitted no later than September 24, 2012.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2010-1078, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *Email:* r9airpermits@epa.gov.

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments that EPA receives within the public comment period will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information where disclosure of the information is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or email. www.regulations.gov is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material or voluminous background documents), and some may not be publicly available in either location (e.g., CBI). To inspect the docket, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972-3524, yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we”, “us”, and “our” refer to EPA.

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I. Background

A. Facility Description and Background

For a detailed discussion of this topic, please refer to our proposed rule at 76 FR 2294 (Jan. 13, 2011). In summary, the Sentinel Energy Project is designed to be a nominally rated 850 Megawatt electrical generating facility covering approximately 37 acres within Riverside County, adjacent to Desert Hot Springs, California in the Palm Springs area. The District determined that the Sentinel Energy Project requires 118,120 pounds (“lbs”) of PM₁₀ offsets and 13,928 lbs of SO_x offsets for the District to issue a permit for construction and operation.

B. Procedural History of Source Specific SIP Revision

The District adopted the AB 1318 Tracking System on July 9, 2010. The California Air Resources Board (CARB) submitted the AB 1318 Tracking System to EPA as a source specific SIP revision on September 10, 2010. EPA issued a completeness letter on October 27, 2010, finding that the submittal met the completeness criteria in 40 CFR part 51 Appendix V. EPA proposed approval of the source specific SIP revision on January 13, 2011. 76 FR at 2294. On April 20, 2011, EPA responded to comments and finalized approval of the source specific SIP revision. 76 FR 22038.

California Communities Against Toxics (CCAT) and Communities for a Better Environment (CBE) filed a petition for review with the United States Court of Appeals for the Ninth Circuit. On July 26, 2011, CCAT and CBE filed their Opening Brief. In the Brief, CCAT and CBE alleged that EPA committed a procedural error by failing to post all of the back-up documentation for the offset transactions on EPA’s eDocket Web site. EPA was not and is not obligated to post all of these voluminous documents to the eDocket Web site. Copies of those documents were available for inspection in EPA’s offices. In addition, those documents had been provided directly to the Petitioners several months earlier. Id.

CCAT and CBE’s Opening Brief set forth some detailed assertions regarding the quantification and surplus adjustments of the offset transactions in the AB 1318 Tracking System. The detailed arguments that CCAT and CBE included in their Ninth Circuit Opening Brief were not included in their comments on our proposed rulemaking.

On September 13, 2011, EPA requested that the Court remand the rulemaking to EPA to supplement the record and provide additional justification for our action. The Ninth

Circuit summarily denied this motion. Several months later after briefing and oral argument, the Court remanded the rulemaking to EPA for additional justification. The Court did not vacate the rule upon remand.

This Supplemental proposal on remand is seeking comment on three specific issues: (1) The District’s quantification of some of the offsets in the AB 1318 Tracking System; (2) the District’s surplus adjustment of certain offsets; and (3) which District Air Quality Management Plan is appropriate for determining the base year to evaluate the availability of offsets from sources that shutdown. These three issues are discussed in more detail below.

C. Offsets in This Source-Specific SIP Revision

When equipment or an entire facility is shutdown, it no longer emits air pollutants. The CAA allows the emission reductions from shutdown equipment or facilities to be used to offset the operation of new or modified stationary sources provided the offsets meet the requirements of CAA Section 173. See 40 U.S.C. 7503(a)(1)(A). Section 173 requires offsets to be permanent, enforceable, quantifiable, and surplus. Id. 7503(c). This Supplemental proposal provides additional information regarding EPA’s prior determination that at least 118,120 lbs of PM₁₀ and 13,928 lbs of SO_x offsets meet the requirements of Section 173 as transferred by the District into the AB 1318 Tracking System. Because the briefs that CCAT and CBE filed with the Ninth Circuit pointed to potential deficiencies with a small number of offsets in the AB 1318 Tracking System, EPA is providing additional information in this Supplemental proposal to identify the specific offsets that we are determining meet all federal requirements.

Attachment A to the Technical Support Document (TSD) for this Supplemental proposal includes two spreadsheets, one for PM₁₀ emissions and one for SO_x emissions. These spreadsheets list each source that has shut down and is no longer operating resulting in offsets that the District transferred into the AB 1318 Tracking System.

The offsets listed in Attachment A meet CAA Section 173’s requirements to be permanent and enforceable because the owner or operator surrendered the permits to the District. It is illegal under SCAQMD Rule 203 for any source to emit any amount of an air pollutant without a valid permit, unless the source is specifically exempted from this requirement under District Rule 219

(Equipment Not Requiring a Written Permit Pursuant to Regulation II). The Federal government or local air agency may bring an enforcement action against a source operating without a permit. Citizens may also bring such actions because Rule 203 is included in the SIP. For these reasons, when a source shuts down and surrenders its permit to the District, its emissions reductions are permanent and enforceable. The source would be required to apply for a new permit, and provide new offsets, in order to operate again.

The offsets listed in Attachment A are also quantifiable as required by Section 173. Each spreadsheet contains two sections, Section I and II, each with two parts (Parts A and B). For all of the sources listed in Section I, two years of actual emission data was used to calculate an annual average. Section I.A. lists those sources where District Annual Emissions Report (AER) data were used, and Section I.B. lists sources where AER, Acid Rain or Emission Reduction Credit (ERC) application data were used. Section II lists the sources where only one year of AER data was reported. Section II.A. lists those sources where only Year 2 data was reported and Section II.B. lists those sources where only Year 1 data was reported. Quantification of the offsets for which only one year of data is available is discussed in more detail below in Section II.D.1.

The offsets listed in Attachment A are surplus in addition to being quantifiable, permanent and enforceable. Our detailed discussion in Section II.D.2. below provides our justification for finding that each pound of offsets listed in Attachment A is surplus to the requirements of the CAA.

In summary, the Sentinel Energy Project needed 118,120 lbs of PM₁₀ offsets and 13,928 lbs of SO_x offsets. The District transferred more than these amounts into the AB 1318 Tracking System for the exclusive use of Sentinel Energy Project. EPA has determined that each of the offsets listed in Attachment A meets all of the creditability requirements of Section 173 of the CAA. The sum of the offsets in Attachment A is 124,797 lbs of PM₁₀ and 25,178 lbs of SO_x, which exceeds the amount needed by Sentinel. For any offset transactions the District included in the AB 1318 Tracking System that are not specifically listed in Attachment A, EPA is not taking a position at this time on whether those offsets meet the federal creditability requirements. Those offsets are not necessary for the Sentinel Energy Project to comply with Section 173(a)(1) even though the District

transferred them to the AB 1318 Tracking System.

D. Appropriate AQMP for Determining the Base-Year

CCAT and CBE raised a third objection to our approval of the source-specific SIP revision. CCAT and CBE claim the District is prohibited from using any emission reductions from facilities that shutdown equipment prior to the last day of 2002. 2002 is the base-year in the 2007 Air Quality Management Plan (AQMP) that the District adopted to demonstrate attainment with the federal PM_{2.5} and 8-hour Ozone National Ambient Air Quality Standards (NAAQS).

40 CFR 51.165(a)(3)(ii)(C)(1)(ii) provides that emissions reductions from shutting down equipment may be used as offsets if “[t]he shutdown or curtailment occurred after the last day of the base year for the SIP planning process.” The regulation also allows pre-base year emissions reductions from shutdown equipment to be used “if the projected emission inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.” *Id.* Based on this regulation, CCAT and CBE contend the District may not include emission reductions from facilities shutting down equipment prior to the last day of 2002 in the AB 1318 Tracking System. In our prior rulemaking, EPA responded to this comment by stating that the District had added the offsets into the attainment demonstration in the 2007 AQMP for the PM_{2.5} and 8-hour Ozone NAAQS.

This Supplemental proposal changes our reasoning on this issue. EPA has evaluated this issue further and determined that the District’s 2003 AQMPs for PM₁₀ for the South Coast and the Coachella Valley Basins establish the correct base year. The base year in these AQMPs is 1997. All of the emission reductions in the AB 1318 Tracking System occurred after 1997, and therefore comply with 40 CFR 51.165(a)(3)(ii)(C)(1)(ii). This issue is discussed in more detail in Section II.D.3. below.

II. Evaluation of Source Specific SIP Revision

A. What is in the SIP revision?

For a detailed discussion of the SIP revision package, please see our proposed approval from January 13, 2011. 76 FR 2294.

The text of the proposed source-specific SIP revision, in relevant part, is:

The Executive Officer of the South Coast Air Quality Management District shall

transfer sulfur oxides and particulate emission credits from the CPV Sentinel Energy Project AB 1318 Tracking System, attached hereto and incorporated by reference herein, to eligible electrical generating facilities pursuant to Health and Safety Code section 40440.14, as in effect January 1, 2010, (i.e. the Sentinel Energy Project to be located in Desert Hot Springs, CA) in the full amounts needed to issue permits to construct and to meet requirements for sulfur oxides and particulate matter emissions. Notwithstanding District Rule 1303, this SIP revision provides a federally enforceable mechanism for transferring offsets from the AQMD’s internal accounts to the Sentinel Energy Project.

This SIP revision is intended to provide a federally approved and enforceable mechanism for the District to transfer PM₁₀ and SO_x offsets from the District’s internal bank to the Sentinel Energy Project and to account for the transferred offsets through the AB 1318 Tracking System.

The District’s SIP revision incorporates by reference each of the offsets from the facilities that shutdown equipment. Based on EPA’s analysis, however, EPA is only proposing to approve that the PM₁₀ and SO_x offsets listed in Attachment A of our TSD meet the federal criteria for purposes of this source-specific SIP revision. This proposal is not taking any action on offsets that are not listed in Attachment A.

B. What are the Federal Clean Air Act requirements?

For a detailed discussion of these requirements, please refer to our proposed approval. 76 FR 2294.

This Supplemental proposal focuses on three requirements. First, the offsets that the District transferred to the AB 1318 Tracking System must be quantifiable. Second, the offsets must be surplus. As discussed in more detail in Section II.D. the offsets in Attachment A meet those requirements. Third, offsets resulting from shutting down emissions units must occur after the base year for the applicable SIP attainment demonstration or otherwise be explicitly included in the SIP’s attainment demonstration. The offsets transferred into the AB 1318 Tracking System meet this requirement with respect to the 2003 AQMPs for PM₁₀ and precursors for the South Coast and Coachella Air Basins.

C. What actions has EPA taken previously?

Prior to our January 13, 2011 proposal to approve this SIP revision, EPA reviewed the District’s Offset Verification Forms and attachments

provided for each source's offsets that the District had transferred to the AB 1318 Tracking System. Our review determined that a sufficient amount of the offsets met the requirements to offset the PM₁₀ and SO_x emissions increases from the operation of the Sentinel Energy Project. Specifically, the Project required 118,120 lbs of PM₁₀ and 13,928 lb of SO_x offsets. The District had transferred a total of 137,799 lbs of PM₁₀ and 25,346 lbs of SO_x offsets into the AB 1318 Tracking System.

EPA has re-evaluated the creditability of some of the offsets in AB 1318 Tracking System. We are now listing the offsets we have determined are creditable in Attachment A. For each source of offsets listed in Attachment A, the District provided documentation demonstrating those offsets meet the Section 173 requirements. Attachment A contains a total of 124,797 lbs of PM₁₀ and 25,178 lbs of SO_x, thereby exceeding the amount required for the Project.

Our prior rulemaking did not specifically identify the offsets that we found met the Section 173 requirements. This Supplemental proposal now specifically identifies the offsets that we have determined meet the requirements of Section 173 and lists those offsets in Attachment A. EPA is not taking any action on, and has not reached any conclusion regarding the creditability of, any offsets the District transferred into the AB 1318 Tracking System that are not listed in Attachment A.

D. How is EPA supplementing its prior proposal now?

This Supplemental proposal provides additional details concerning EPA's determination that at least 118,120 lbs of PM₁₀ and 13,928 lbs of SO_x offsets transferred into the AB 1318 Tracking System meet the offset integrity requirements of Section 173. See Attachment A to the TSD.

1. The District Has Demonstrated That at Least 118,120 lbs of PM₁₀ and 13,928 lbs of SO_x Offsets Are Properly Quantified

To determine if the offsets listed in Attachment A were properly quantified, we reviewed the District's Offset Verification Forms and additional documents. From these documents, we have listed the following information in Attachment A: The type of equipment shutdown, the year the equipment was shutdown, the year 1 (i.e. the year immediately preceding the shutdown) and year 2 (i.e. the second year prior to shutdown) data of pre-shutdown actual emissions, the annual average of both

years of pre-shutdown actual emissions (if available), the amount of emissions reductions calculated by the District, the amount calculated for this Supplemental proposal and the source of the emissions data.

The offsets listed in Section I.A. of Attachment A rely on two years of emissions data reported by the source in its AER. The offsets listed in Section I.B. rely on two years of emissions data reported to EPA's Acid Rain database (either solely or in addition to an AER), or in one case, in an application for an ERC.¹ These sources of emissions data are reliable and inherently discourage inaccurate reporting. The permittee must pay substantial fees to the District based on the quantity of emissions reported in the AER, thereby discouraging over-reporting. The Acid Rain database collects data directly from Continuous Emission Monitors or throughput combined with a well established emissions factor. Finally, the emission data used to evaluate the Emission Reduction Credit application was based on actual operating data and reported emissions.

The offsets from sources listed in Section II rely upon one year of emissions data. Section 173 of the CAA does not define how to calculate actual emissions for purposes of providing offsets. EPA's regulations setting forth SIP requirements for offsets are also silent on this issue. See 40 CFR 51.165(a)(3)(i)(C). EPA's Emissions Offset Interpretative Ruling at 40 CFR Part 51, Appendix S, however, provides guidance for calculating the "baseline for determining credit for emission and air quality offsets". Appendix S provides:

When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offsets should be calculated using the actual annual operating hours for the previous *one or two year period* (or other appropriate period if warranted by cyclical business conditions).

Id. at IV.C. (emphasis added). Therefore, Appendix S contemplates situations in which one year of emissions data is sufficient.

CCAT and CBE have asserted that the District must use two years of actual emissions to calculate the actual emissions for offsets. This assertion relies on the definition of "actual emissions" in 40 CFR 51.165(a)(1)(xii). This definition of "actual emissions" is

¹ For one project, Seagull Sanitation, the source shutdown and applied for ERCs. The District subtracted the amount of offsets required to comply with Best Available Retrofit Technology at the time of shutdown. Then the District subtracted the amount of offsets that the source "owed" the District.

not provided for determining offset credit.

We do not need to resolve whether CCAT has relied on the incorrect definition or whether 2 years of emissions data is required for purposes of this proposal. For this proposal, the District either used 2 years of data or appropriately adjusted the single year data. Section II.A. lists sources where we had only Year 2 data (i.e. data for the second year prior to shutdown) and Section II.B. lists sources where only Year 1 data (i.e. data for the year immediately preceding shutdown) was available. For the offsets in Section II.A where the source only reported AER data for Year 2, the District assumed that Year 1 emissions data (the year immediately prior to shutdown) was zero, and the Year 2 data was divided by two to calculate an annual average. Therefore, the District's approach for the sources in II.A is very conservative in calculating the lowest possible amount of offsets.

For the sources listed in Section II.B. where the source only reported AER data for Year 1, then the District assumed that Year 2 data was not reported and the Year 1 data determined the quantity of offsets. For this small fraction of the facilities, the baseline emissions were calculated based on the emissions data from the year immediately preceding the shutdown date. For these facilities, because the data from the twelve month period immediately preceding the shutdown was available, there was no possibility that the year one emissions over estimated the actual emissions for the facility prior to shutdown. There was also no information to indicate that the emissions from the year immediately preceding shutdown were not representative. Therefore, the one year of emissions are representative and not over estimated.

Based on the requirement in 40 CFR part 51, Appendix S and 51.165, EPA is proposing to determine that the District appropriately quantified the offsets for those sources with only one year of emissions data and that these emission reductions meet the requirement of CAA section 173 and 40 CFR part 51 Appendix S and 51.165(a)(1)(C) to be quantifiable.

2. Offsets From Aggregate Facilities and Cement Operations Are Surplus

When EPA proposed approval of the SIP revision in January 2011, we received a comment from CBE and CCAT that contended generally that not all of the offsets from aggregate facilities, spray booths and other industrial sources were surplus. In our

response to comments, we stated that all of the emissions reductions were surplus because “[t]he District has not promulgated any new rules or standards that would apply to these types of sources, and thus no adjustments to the credits were required.” 76 FR at 22038. After we issued our response to comments and final rule, CBE and CCAT petitioned for judicial review. In briefing to the Court, CBE and CCAT stated for the first time that the District had adopted Rules 1156 and 1157 that require reductions of emissions at cement plants and aggregate plants. In this Supplemental proposal, EPA is adding information on the surplus adjustment made for the offsets in the AB 1318 Tracking System subject to Rule 1157 (PM₁₀ Emission Reductions From Aggregate and Related Operations).

It is important to note that the surplus adjustment of the offsets was not required to be performed until the time the authority to construct permit was issued because EPA requires the surplus adjustment “at the time of use”. The permit was not issued until after the final approval of our prior SIP action and was not included in the docket. However, now that the permit has been issued, we have re-evaluated the need to surplus adjust the offsets.²

Rule 1156 does not apply to any of the offsets included in the AB 1318 Tracking System. Rule 1156 (Further Reduction of Particulate Emissions from Cement Manufacturing Facilities) only applies to cement manufacturers, not users of cement products.³ Two facilities in the AB 1318 Tracking System, Elsinore Ready-Mix Co., Inc. and Oldcastle Westile, Inc., use cement products but do not manufacture cement. Therefore, Rule 1156 does not apply to those facilities and Rule 1156 does not require any surplus adjustment to the offsets from these facilities or any others in the AB 1318 Tracking System.

Rule 1157, which applies to aggregate facilities, was also adopted after the earliest date equipment was shutdown for any offsets included in the AB 1318 Tracking System (i.e. 1999). Six aggregate facilities are included in the AB 1318 Tracking System. Matthews International Corp. is not subject to Rule 1157 because the rule only applies to

aggregate operations which are defined as “operations that produce sand, gravel, crushed stone, and/or quarried rocks.” Since Matthews is a quarrying operation that uses, but does not produce sand, the facility is not subject to Rule 1157.

Rule 1157 applies to the six aggregate facilities in the AB 1318 Tracking System. If any of these facilities were already operating in compliance with the new standards in Rule 1157, then no surplus adjustment was required to ensure the emission reductions were surplus (i.e. went beyond the reductions required by the rule). In other words, the emissions from these facilities were already equal to or less than the emissions allowed by Rule 1157. The rule requires various techniques to be used throughout the facility to minimize PM₁₀ emissions. These techniques include housekeeping provisions such as cleaning spills on paved roads; control techniques such as the application of water or dust suppressants, enclosures and baghouses; and equipment and work standards to minimize track out of materials. The District establishes emission factors based on the use of these techniques as part of the rulemaking process for adopting Rule 1157. If the facility’s total emissions are below the material throughput multiplied by the applicable emissions factors, the facility is in compliance with Rule 1157. In this case, no further surplus adjustment is required unless the rule is amended to further reduce the allowable emissions before the offsets are used. While Rule 1157 has not been amended, the District has adopted revised emission factors for the various operations subject to this rule,⁴ and therefore, further adjustments were made to the offsets from these six aggregate facilities. These further adjustments are discussed in more detail in the TSD and shown in Attachment A.

3. The District Properly Transferred Offsetting Emission Reductions From Sources that Shutdown in 1999–2002

The final issue for comment in this Supplemental proposal concerns the appropriate SIP AQMP for the District and EPA to use to evaluate whether the emissions reductions from shutdown units have been included in the SIP’s base year.

40 CFR part 51, Appendix S,⁵ at IV.3, provides: Emissions reductions achieved by

⁴ See letter from Barry R. Wallerstein to Malcolm C. Weiss, Subject: Rule 1157—PM₁₀ Emission Reductions from Aggregate and Related Operations, dated December 15, 2006.

⁵ Appendix S has the same language that is used in 40 CFR 51.165.

shutting down an existing source or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in paragraphs IV.C.3.i.1 through 2 of this section.

Section IV.C.3.i.1 requires the emissions reductions to be surplus, permanent, quantifiable and federally enforceable. Section IV.C.3.i.2 allows emission reductions from shutdown equipment or curtailed operations to be used provided:

The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this paragraph, a reviewing authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions units.

In our final rulemaking, EPA responded to comments on this issue by indicating our understanding that the District properly added pre-base year credits into its 2007 PM_{2.5} AQMP which we concluded met the requirements of the second sentence of the IV.3.C.i.2.

EPA has now determined that it would be more appropriate to rely on the District’s 2003 PM₁₀ AQMPs, rather than their 2007 PM_{2.5} AQMP for two reasons. The reason for relying on the 2003 AQMPs is that the offsets the District transferred to the AB 1318 Tracking System are for PM₁₀, not PM_{2.5}. The District has approved PM₁₀ AQMPs for both the South Coast Air Basin and the Coachella Valley that were adopted in 2003. Therefore, the appropriate AQMP for EPA to reference when evaluating PM₁₀ offsets (and precursors including SO_x) for the AB 1318 Tracking System is the approved 2003 PM₁₀ AQMPs. The inventories in the 2003 PM₁₀ AQMPs have a base year of 1997 for both the South Coast Air Basin and the Coachella Valley.⁶ None of the offsets transferred by the District were derived from shutdowns occurring before the last day of 1997. Therefore all of the offsets in the AB 1318 Tracking System resulting from shutdown equipment were included in the base year for the 2003 PM₁₀ AQMPs, including SO_x as a precursor.⁷

⁶ EPA also notes that we had not approved the 2007 PM_{2.5} AQMPs at the time the District transferred the offsets to the AB 1318 Tracking System. EPA proposed approval of the 2007 PM_{2.5} AQMP in July 2011 and finalized approval on November 9, 2011.

⁷ Although we are now relying on the 2003 PM₁₀ AQMPs, EPA has not changed our determination that the District explicitly added offsets into the inventories for the 2007 AQMP as discussed in EPA’s and the District’s briefing to the Ninth Circuit.

² We considered the surplus adjustment at the time of our prior approval, however, the District made some final surplus adjustments before issuing the permit. This later adjustment does not change our prior determination that the available offsets in the AB 1318 Tracking System were more than required for the Sentinel Energy Project.

³ As stated in the District’s Staff Report for Rule 1156, the two facilities affected by Rule 1156 are TXI Riverside Cement and Cal Portland Cement.

EPA is now proposing to approve the AB 1318 Tracking System because all of the offsets for PM₁₀ and the precursor SO_x occurred after the base year of 1997 in the PM₁₀ AQMPs.

E. Section 110(l) Evaluation

Under section 110(l) of the CAA, EPA may not approve any SIP revision that would interfere with attainment, reasonable further progress (RFP) or any other CAA requirement.

We have determined that this SIP revision will not interfere with attainment or RFP because the offsets in the AB 1318 Tracking System are not relied on for attainment or RFP in the District's attainment demonstrations. We are also not aware of this revision interfering with any other CAA requirement. For example, this source-specific SIP revision provides a new but equivalent mechanism to provisions in Regulation XIII for satisfying the offset requirements of CAA Section 173 because the offsets the District is transferring from its internal bank to the AB 1318 Tracking System meet all federal requirements. In addition, the District supplied a copy of its air quality analysis for the Sentinel Energy Project that shows that operation of the facility will not interfere with the ability of the District to reach attainment.

F. Public Comment and Final Action

Because EPA believes the submittal fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period,

we intend to publish a final approval action, addressing all public comments, which will incorporate this submittal into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 9, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

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