



Contingency Measures for State Implementation Plans

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What are Contingency Measures?

Measures in SIPs that can take effect without further action upon failing to attain or failing to meet an RFP milestone

- Purpose is to provide reductions while new plan is being developed
- Must be already adopted
- Must have a trigger



Clean Air Act Requirements

- Section 172(c)(9) and 182(c)(9)
- “Implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date...”
- “Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.”

Contingency Background

- CAA does not specify a required amount of reductions
- 1992 General Preamble interprets requirements to mean one year's worth of RFP (3% of baseline emissions for ozone or the fraction of base year emissions required per year for PM)
- Historically met using excess reductions from ongoing implementation of adopted mobile source programs to provide one year's worth of reductions by the year after attainment and in RFP years

Court Decisions

- *Bahr v. U.S. EPA* (2016) – determined that the CAA requires CMs to include a triggered element and that this must be a future action that will be triggered by a failure to attain or make RFP
 - *Sierra Club v. U.S. EPA* – made *Bahr* effective nation-wide
- *AIR v. U.S. EPA* (2021) – Rejected triggered CM that achieved much less than 3% reduction and stated that the required amount of reductions need to come from CM itself , and stated that EPA erred because they did not provide a reasoned justification for going against their longstanding policy and guidance

Requirements Under Existing Guidance and Bahr/AIR Decisions

- Must be a triggered measure(s) that would begin without State/EPA action after the effective date of an EPA finding
- Implementation must begin within 60 days
- CM must achieve one year's worth of RFP
- Reductions must be achieved by the ozone/PM season following the year for which the relevant failure occurred

Challenges

- One year's worth of RFP = significant amount of emissions
- Scarcity of emissions sources
 - Mature control programs, with many driving to zero-emissions
 - Many sources remaining are primarily federally regulated
- Difficult to achieve reductions within one year
- Areas with extreme air quality challenges would not hold back measures that could achieve reductions of that magnitude

EPA Task Force & Guidance

- EPA internal task force began in early 2021 and recently concluded; EPA HQ staff are now drafting guidance based on recommendations
 - Proposed guidance anticipated in next few months
- Possible directions:
 - Less than one years worth of RFP approvable if State can provide a reasoned justification for lack of additional measures (i.e. scarcity)
 - Calculate required percentages from attainment/RFP year
 - Allow flexibility in timing of implementation

Looking Forward

CARB and CA districts are exploring options, but none yet that achieve 3%:

- South Coast Rule 445, Wood-Burning Devices - Approved as PM CM, but not to completely fulfill requirements as reductions are not one years worth RFP
- San Joaquin Valley – Architectural Coatings Rule, removal of exemption, not yet approved
- West Mojave Desert – Expand Enhanced I&M
- Statewide CM as trigger in a CARB regulation

Thank you!

Questions?