CALIFORNIA
AIR RESOURCES BOARD

Gavin Newsom, Governor
Jared Blumenfeld, CalEPA Secretary
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October 9, 2019

Andrew R. Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler:

As you requested, I am responding to your letter dated September 24, 2019. The California Air Resources Board (CARB) is happy to assist the U.S. Environmental Protection Agency (U.S. EPA) in clearing its State Implementation (SIP) backlog and, in particular, to withdraw SIPs for which U.S. EPA action is no longer needed. Indeed, as you may not have been aware in writing your letter, CARB has been helping U.S. EPA to resolve its administrative backlog for years. In 2014, U.S. EPA reached out to California asking for help with this backlog, and U.S. EPA, CARB, and local air districts agreed on a four-year plan to review, act on, or withdraw SIP submittals for each nonattainment area. Pursuant to this model collaborative process, U.S. EPA, CARB, and local air districts have worked together and cleared over 200 district rules and four attainment SIPs from U.S. EPA's backlog. CARB looks forward to continuing such productive cooperation with U.S. EPA, which is in the interests of U.S. EPA, CARB, the relevant stakeholders, and the public in general.

I am compelled, however, to point out that your letter contains many inaccuracies and misleading statements. Contrary to the letter's suggestion, California has been working diligently for decades to protect its residents from the harmful effects of smog, particles, toxics, and climate-warming pollution as required by the Clean Air Act. Moreover, the SIP backlog discussed in your letter consists of SIPs awaiting action by Regional U.S. EPA staff, and the multi-year delays in acting on California's SIPs are the result of staff shortages, competing administrative priorities, and a lack of clear guidelines emanating from headquarters bureaucracy. Happily, as detailed below, none of your agency's administrative delays have had any impact whatsoever on public health because California has moved ahead with implementation in the absence of U.S. EPA action. Under these circumstances, your sanctions threat is at best unfounded.

CARB was established years before U.S. EPA came into existence. Since then, CARB has led the nation in setting aggressive, effective, and cost-effective emissions standards for cars and trucks, with Congress repeatedly reaffirming its authority as an

innovator and driver of clean air technologies. To reduce emissions for light duty vehicles, California set a hydrocarbon tailpipe emission standard in 1966 and an oxides of nitrogen (NOx) emission tailpipe standard in 1971, ahead of U.S. EPA. Other regulations lowering emissions from light-duty vehicles that California has pioneered include the On-Board Diagnostic regulation beginning in 1988, the Low-Emission Vehicle and Zero-Emission Vehicle programs established in 1990, and the Reformulated Gasoline regulation beginning in 1992.

To reduce emissions from heavy-duty vehicles, California implemented the Clean Diesel Fuel program in 1992, and set low-NOx tailpipe emissions standards from heavy-duty diesel engines beginning in 1994. California anti-idling regulations lowered NOx emissions near schools and other populated destinations beginning in 1998. Solid waste collection vehicle and drayage truck rules, in 2008 and 2010 respectively, lowered emissions from specific occupational vehicles. In 2010, CARB adopted the groundbreaking Truck and Bus Regulation requiring all heavy-duty trucks to be equipped with a 2010 or newer engine by 2023. As Regional Administrator Mike Stoker recognized earlier this month, "Heavy-duty trucks can emit drastically higher levels of pollution when not equipped with required emissions controls. Transport companies must comply with California's rule to improve air quality and protect adjacent communities from breathing these toxic pollutants."[1] "The California Truck and Bus Regulation has been an essential part of the state's federally enforceable plan to attain cleaner air since 2012."[2]

Your letter incorrectly refers to 82 nonattainment areas in the state, apparently counting a single area repeatedly if it is not in attainment for multiple increasingly stringent standards and pollutants. For example, the letter counts the greater Los Angeles area as nonattainment for ozone four times and once more for fine particulate matter. It also included two tribal areas for which U.S. EPA—not California—is responsible under the Clean Air Act, and these two areas were counted six times. In fact, California has 20 nonattainment areas in total for ozone and fine particulate matter. We still have much work to do, but there is no point in making the task look harder than it already is.

The letter further suggested that most of the SIPs in U.S. EPA's backlog have fundamental approvability issues, state requested holds, missing information or resources. On the contrary, based on our preliminary review, for almost two-thirds of the SIPs U.S. EPA has the information it needs and we are awaiting U.S. EPA's action. Less than 20 items require additional action by CARB or local districts before U.S. EPA

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[1] U.S. EPA settles with six companies over California trucking rules, Oct. 2, 2019. News Release, https://www.epa.gov/newsreleases/us-epa-requires-trucking-companies-reduce-air-pollution-near-los-angeles-schools.
[2] *Ibid.*

can act. That work is underway, but is hindered by the lack of clear and consistent U.S. EPA guidelines. For example, many of the SIPs were complete and approvable when submitted, but in 2016 while the SIPs sat with U.S. EPA a court directed U.S. EPA to change its requirements for contingency measures. Because U.S. EPA has yet to complete that task and provide clear directions on contingency measures, many SIPs that were approvable when submitted remain incomplete. Finally, we have also identified about two dozen SIPs that are candidates to withdraw.

The specific examples identified in your letter bear out this analysis. CARB already has asked that one of the six SIPs identified in the letter, the Ventura County SIP for the 1997 8-hour ozone national ambient air quality standards (NAAQS), be withdrawn. CARB made this request on September 16, 2019 and is awaiting U.S. EPA action to remove the SIP from its backlog. Two other SIPs are complete. In September 2019, at U.S. EPA's request, CARB submitted the air district's formal commitment to adopt required contingency measures for the Coachella Valley SIP for the 2008 8-hour ozone NAAQS, and U.S. EPA staff informed CARB that U.S. EPA now has all the information it needs to approve the SIP. Similarly, in August 2019, at U.S. EPA's request CARB provided technical clarifications and a contingency measure commitment for the Ventura County SIP for the 2008 8-hour ozone NAAQS.

The remaining three SIPs identified in your letter are all complete but for the contingency measures required by the 2016 court ruling. On July 24, 2017, one SIP, the Coachella Valley SIP for the 1997 8-hour ozone NAAQS, which was submitted in 2007, was approved except for the contingency element affected by the 2016 court ruling, which U.S. EPA did not take action on. The two remaining SIPs, the Sacramento Metro SIP for the 2008 8-hour NAAQs and the Western Nevada County SIP for the 2008 8-hour ozone NAAQS, were determined to be complete (on June 14, 2018 and June 2, 2019 respectively), and CARB is working with U.S. EPA and the local air districts to provide the contingency measure commitment letter, which is the only remaining element needed to facilitate approval and is expected to be ready in the first quarter of 2020.

Thus, far from showing any pending SIPs with fundamental defects, the examples cited in your letter confirm that CARB has been working with U.S. EPA to resolve its backlog, including the problems created by changes in the law that have occurred while SIPs await action by U.S. EPA.

California Takes Its Responsibility to Implement the Clean Air Act Seriously

In addition to mischaracterizing U.S. EPA's backlog, your letter accuses California of failing to carry out its duties under the Clean Air Act. That is simply false. Since the creation of CARB in 1967, our primary focus has been to reduce air pollution and protect the health of the citizens of California. California has endeavored to fulfill this

responsibility and continues to make significant progress lowering emissions from the largest source of these emissions: mobile sources. Despite an approximately 30 percent increase in the state's vehicle population and vehicle miles traveled since 1990, air quality in the state has dramatically improved:

- In 1990, the entire South Coast region exceeded the 80 parts per billion (ppb) 8-hour ozone standard. Today, we have slashed emissions by over half, ozone concentrations have declined 40 percent, and the number of days when pollution levels exceed the 80 ppb ozone standard has declined by more than 60 percent.

- In the San Joaquin Valley, the area with the most critical particulate matter pollution problem in the nation, PM2.5 levels have dropped by approximately 30 percent since 2001, and the entire region now meets the 65 micrograms per cubic meter 24-hour standard that was set in 1997.

This progress is in part the result of special authority given California under the Clean Air Act. Over 50 years ago, Congress granted California the authority to regulate most on-road mobile sources through a waiver from federal preemption based on the severity of California's air quality problems and the extent that emissions from these sources contribute to air pollution in the State. Congress also made clear that CARB and California air districts also have extensive authority over in-use regulations. (42 U.S.C. § 7543). Using this authority, CARB implemented the groundbreaking regulations that I mentioned earlier.

We continue that tradition today with the long-term goal of eliminating harmful motor vehicle emissions by transitioning light- and heavy-duty fleets in the State to zero-emission vehicles. Over the last decade, California has invested over $5 billion, with nearly $1 billion in additional appropriations, in programs like the Low Carbon Transportation and Carl Moyer Air Quality Standards Attainment Program, for replacing the dirtiest vehicles and deploying the cleanest technologies, including zero-emissions cars and trucks. CARB also just adopted regulations targeting specific fleets that will foster the growth in cleaner technology. These include the Innovative Clean Transit Regulation, adopted by CARB in 2018, which will reduce NOx in transit-dependent and disadvantaged communities, and the Zero-Emission Airport Shuttle Bus Regulations, which will increase the penetration of zero-emission heavy-duty technology.

And California is not stopping. In 2020, CARB will act on the Advanced Clean Trucks regulation, which will accelerate the transition of heavy-duty trucks that operate in urban centers with stop-and-go driving cycles to zero-emissions technology that will reduce near-source high emission exposure to harmful pollution and cut costs. Also in 2020, we will be considering a new lower NOx standard for trucks. Over the next

three years, California will be implementing the requirements of California Senate Bill 1, which will withhold the registration of polluting trucks. Finally, California Senate Bill 210 (Leyva), recently passed by the Legislature and signed by Governor Newsom, requires CARB to establish a first-of-its kind inspection and maintenance program for heavy-duty trucks.

In addition to the impressive work California has done to reduce mobile source emissions, we've also made great strides in reducing emissions from stationary sources. Many of our local air districts have the most stringent stationary source regulations in the country and have achieved substantial emission reductions while continuing California's robust economic growth. For example, in the South Coast Air Quality Management District, NOx emissions have fallen over 60 percent since 1990, at the same time that region experienced a 30 percent increase in population. However, while we continue to push for state-of-the art controls on stationary sources, the fact of the matter is that further reducing stationary source emissions will pay diminishing dividends absent action on the federal emission sources.

CARB is also pursuing strategies for regions facing especially severe air quality problems. We are considering a number of additional actions to provide the emissions reductions needed to meet the criteria pollutant standards in the South Coast and the San Joaquin Valley creating the most stringent emissions standards in the country, for instance:

1. A Tier 5 Off-Road Diesel Engine Standard, including more stringent standards to reduce NOx and fine particulate emissions by up to 90 percent below the current Tier 4 standards, as well as potential requirements to offer for sale off-road vehicles with zero-emission technology.

2. A locomotive emissions reduction measure, requiring that Class 1 railroads set aside funds each year to purchase Tier 4 or cleaner locomotives to address in-use emission, idling, and maintenance activities.

3. Regional strategies to reduce vehicle miles traveled and NOx emissions.

4. An implementation framework to achieve co-benefits from the electrification of buildings as grid electricity in California transitions to 100 percent clean energy through incentives for early retirement or replacement and new installations of residential and commercial water heating, space heating, and air conditioning appliances with zero or near-zero emission technologies.

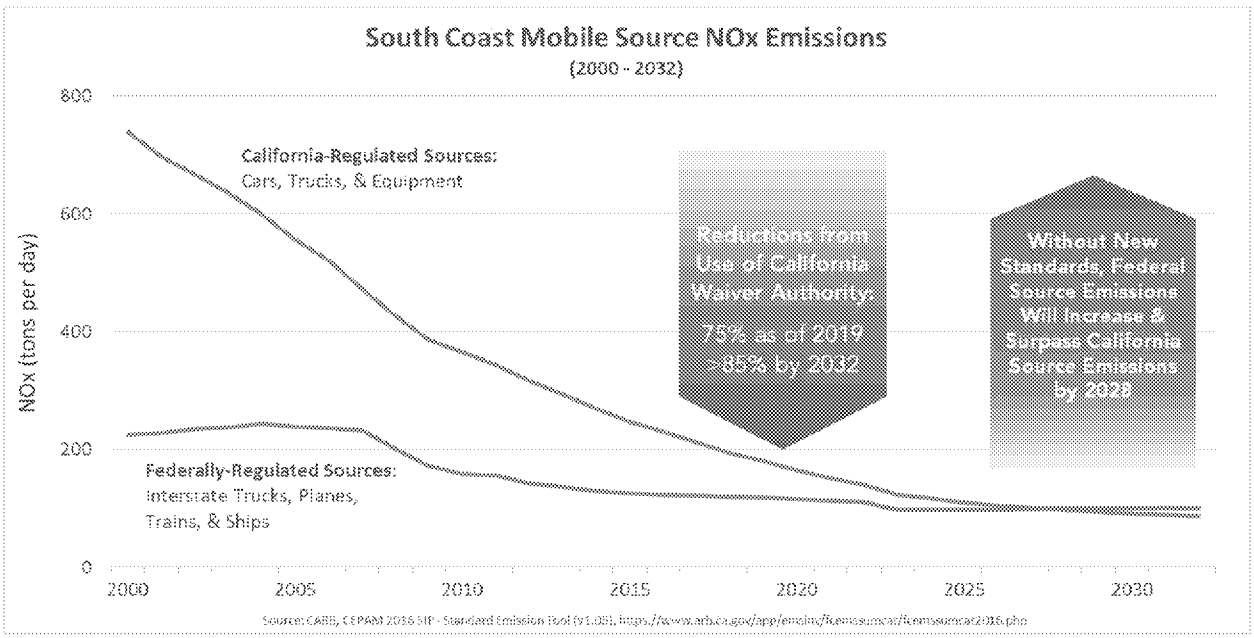
5. Integrating land and transportation strategies that through land conservation protect soil-based carbon while providing simultaneous reductions in emissions from transportation.

6. A State green contracting policy—building on Governor Newsom's recent directive for State government to immediately redouble efforts to reduce greenhouse gas emissions and mitigate the impacts of climate change while building a sustainable, inclusive economy—requiring that contractors purchase the cleanest equipment available in order to be considered for these contracts and that State agencies purchase the cleanest vehicles and equipment that are available.

U.S. EPA Needs to Do Its Job and Protect Air Quality

As shown above, using its authority, including its waiver authority, California has been doing its part to protect air quality. Sadly, U.S. EPA has not done its part.

The stark difference is clearly seen in the figure below. Using our regulatory authority as preserved by Congress, we have reduced NOx emissions from mobile sources we can regulate by approximately 70 percent since 2000. This reduction is projected to grow to 85 percent by 2030. In contrast, due to weak action from U.S. EPA, pollution from sources over which it has been given substantial responsibility—including aircraft, locomotives, ocean-going vessels, and off-road equipment—has been increasing. If this trend continues, by 2030 pollution from these sources will be greater than that from California regulated sources and be responsible for nearly one third of emissions in the South Coast.



Pollution from Sources for Which U.S. EPA Has Responsibility Is Increasing

U.S. EPA recognized the need for federal action in 2019 when it approved California's *2016 State Strategy for the State Implementation Plan*. That SIP outlined specific U.S. EPA actions that were necessary for the greater Los Angeles area to meet federal clean air standards for ozone and particle pollution. These included:

- A federal low-NOx engine standard, to provide 7 tons per day (tpd) of NOx reductions in 2031;
- More stringent locomotive standards achieving 2 tpd of NOx reductions in 2031;
- A Tier 4 Ocean-Going Vessel standard or equivalent for new marine engines on ocean-going vehicles and vessel efficiency requirements for the existing in-use fleet to achieve 38 tpd of NOx reductions; and
- Further deployment of cleaner technologies for aircraft achieving 13 tpd of NOx reductions in 2031.

In total, the U.S. EPA-approved SIP made clear that we need a total of 60 tons per day of NOx reductions in the South Coast alone from sources for which U.S. EPA has the primary responsibility.

CARB and the South Coast Air Quality Management District are using all the tools and authority at our disposal to achieve emissions reductions from these sources in the absence of U.S. EPA action. But U.S. EPA should not hide behind California's efforts and avoid taking action to protect the health of the people you were established to serve. Rather than mischaracterizing U.S. EPA's backlog as the result of California's purported failure to implement the Clean Air Act and threatening to withhold California's transportation funds, it is imperative that U.S. EPA move quickly to do its job and reduce pollution from the sources it has the responsibility to regulate. California is prepared to coordinate with you in all efforts to focus on real actions to reduce emissions and protect people exposed to unhealthful air.

U.S. EPA's Backlog is the Result of U.S. EPA Failing to Take Timely Action

The California SIP backlog is made up of a mix of attainment plans to provide the reductions needed to meet air quality standards, supported by the authority to implement those plans. CARB submits attainment plans and regulations to U.S. EPA for its review and approval. The Clean Air Act requires that U.S. EPA take action on these submittals within 18 months after it receives them. U.S. EPA's backlog of attainment plans, regulations, and rules has been building for decades. U.S. EPA's

backlog is the result of its own failure to take timely action and the circumstances surrounding each submittal, including:

- Submitted rules that U.S. EPA has given lower priority for review based on its limited resources (due, in part, to U.S. EPA staff cuts and hiring freezes);
- Submitted rules that received no action before being later updated by an air district, and so are out of date and no longer governing;
- Submitted SIP elements that U.S. EPA has since concluded are not needed in the SIP, but have taken a lower priority in response to more pressing issues;
- Rules or attainment plans where U.S. EPA has delayed taking action because there is concern over setting national precedent or where U.S. EPA has not yet decided how to address recent court actions that impact the decision.

The average amount of time the remaining SIPs have been awaiting U.S. EPA action is 8 years.

I must emphasize, however, that U.S. EPA's administrative failure has not impeded California's efforts to continue its march towards achieving clean air. Regardless of U.S. EPA's inaction on the SIP submittals, California has not waited to adopt and implement cleaner emissions standards and programs to protect the health of its residents while this process plays out. As evidence of our progress, since the beginning of 2017, California has submitted 14 attainment plans to attain the 75 ppb 8-hour ozone standard and PM2.5 standards, and the air districts have submitted 117 rules to implement those plans.

California Will Continue to Help U.S. EPA Clear its Backlog

We encourage you to work with your dedicated regional staff to streamline your internal procedures to work as efficiently and transparently as possible, so that staff and external parties know what is expected. Much of the delay that you have now acknowledged is a result of vague, confusing or nonexistent guidelines from headquarters. It is past time for U.S.EPA to take seriously the Clean Air Act directive to develop "cooperative" programs with the states to protect the nation's air, and promote "reasonable" federal and state actions, assisting local governments in partnership. (42 U.S.C. § 7401).

As shown above, CARB has been a good partner to U.S. EPA. California has fully met its obligations. In these circumstances—with a decades-long record of state cooperation and innovation on SIPs, steadily improving air quality, and a backlog problem solely of U.S. EPA's making—a threat of disapproval and imposition of

sanctions constitutes an abuse of U.S. EPA authority. As you are doubtless aware, sanctions may be imposed only after extensive notice-and-comment processes and formal disapproval. Even then, the Clean Air Act and controlling U.S. EPA regulations generally direct that sanctions be imposed only after 18 months and if the state does not cure the issue. As a result, since U.S. EPA has not even proposed any such findings, sanctions would not apply until well after U.S. EPA's backlog could be cleared. Moreover, highway sanctions are a disfavored initial option in the rare cases where sanctions are appropriate at all. Far better would be for our agencies to continue to work together to resolve the issue as the sanctions would be wasteful and a direct hit to construction jobs.

CARB remains committed to a partnership in resolving the backlog issue and is prepared to accelerate the process already in place with U.S. EPA staff and the local air districts. This includes devoting more CARB staff to the effort if needed. I have directed CARB staff to review carefully each of the SIPs remaining in U.S. EPA's backlog to determine whether withdrawing any individual submission is appropriate. Because these decisions are fact-specific, any such determinations will need to be made on a case-by-case basis going forward. CARB staff has provided the results of their preliminary review to U.S. EPA staff and is scheduling a meeting to review CARB's assessment and agree on a path to clear U.S. EPA's backlog quickly.

We look forward to working with your staff to develop rules to control sources under your authority, resolving U.S. EPA's backlog in our ongoing pursuit of clean air, and pursing a cooperative relationship for achieving what must be our shared goal of clean air for all.

Sincerely,

Mary D. Nichols
Chair

cc: The Honorable Diane Feinstein
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Richard W. Corey
Executive Officer