
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: AB 2550
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Version: 4/28/2022
Urgency: No
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Hearing Date: 6/16/2022
Fiscal: Yes

SUBJECT: State Air Resources Board: San Joaquin Valley Air Pollution Control District: nonattainment

DIGEST: Requires the California Air Resources Board (ARB), if the San Joaquin Valley Air Pollution Control District does not receive a determination of attainment from the United States Environmental Protection Agency (US EPA) by the appropriate deadline, to coordinate with the district and community-based organizations to identify gaps in the state and district implementation plan. Requires ARB to develop a program, rules, or regulations that they deem necessary to enable the district to attain and maintain that national ambient air quality standard and authorizes those solutions to have the same force and effect as a program, rule or regulation adopted by the district.

ANALYSIS:

Existing law:

- 1) Sets, through the Federal Clean Air Act (FCAA) and its implementing regulations, National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, designates air basins that do not achieve NAAQS as nonattainment, allows only California to set emissions standards stricter than the federal government, and require states with nonattainment areas to submit a State Implementation Plan (SIP) detailing how they will achieve compliance with NAAQS. (42 U.S.C. §7401 et seq.)
- 2) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires ARB, among other things, to control emissions from a wide array of mobile sources and coordinate, encourage, and review the efforts of all levels of government as they affect air quality. (Health and Safety Code (HSC) §39500 et seq.)
- 3) Requires, subject to the powers and duties of ARB, local air pollution control districts and air quality management districts (districts) to adopt and enforce rules and regulations to achieve and maintain the state and federal ambient air

quality standards in all areas affected by emission sources under their jurisdiction, and to enforce all applicable provisions of state and federal law. (HSC §40001)

- 4) Requires air districts to develop attainment plans detailing how they will attain and maintain state air quality standards, and submit those plans to ARB. (HSC §40910 et seq.)
- 5) Requires air districts to review and revise its attainment plan every three years to correct deficiencies in meeting the interim measures of progress incorporated into the plan and adopt the revision at a public hearing. (HSC §40925)
- 6) Requires ARB to:
 - a) Review the district attainment plans to determine whether the plans will achieve and maintain state air quality standards by the earliest practicable date;
 - b) Review district rules, regulations and programs to determine whether they are sufficiently effective to achieve and maintain state air quality standards;
 - c) Review district and other local enforcement practices to determine whether reasonable action is being taken to enforce their programs, rules, and regulations; and (HSC §40150)
 - d) Conduct a public hearing in each affected air basin prior to reaching a final determination of the sufficiency of the plans. (HSC §41503)
- 7) Authorizes ARB, if it finds that the program or the rules and regulations of a district will not likely achieve and maintain state air quality standards, to establish a program, or rules and regulations it deems necessary to enable the district to achieve and maintain such standards, which shall have the same force and effect as a district program, rule, or regulation and shall be enforced by the district. (HSC §41504)
- 8) Authorizes ARB, if it finds that a district is not taking reasonable action to enforce the statutory provisions, rules, and regulations relating to air quality in such a manner that will likely achieve and maintain state air quality standards, to exercise any of the powers of that district to achieve and maintain such standards. (HSC §41505)

This bill:

- 1) Requires ARB, if the San Joaquin Valley Air Pollution Control District does not receive a determination of attainment from the United States Environmental Protection Agency (US EPA) for a NAAQS by the applicable attainment date, to:
 - a) Coordinate with the district and community-based organizations in the district, and conduct outreach to under-resourced communities in the district, to identify gaps in the SIP and the district's attainment plan;
 - b) Coordinate with the district to provide additional monitoring and enforcement capacity for stationary sources in the district, including, but not limited to, independently inspecting, or accompanying the district on inspections of, the largest stationary sources in the district;
 - c) Develop programs, rules, or regulations, that ARB deems necessary to enable the district to attain and maintain the triggering NAAQS. These programs, rules, or regulations shall have the same force and effect as any such action taken by the district and shall be enforced by the district; and
 - d) Conduct at least one public hearing in the district regarding the district's attainment plan and solicit public comment on:
 - i) The state board's review of the district's attainment plan, rules, regulations, programs, and enforcement practices;
 - ii) Gaps in the state implementation plan and the district's attainment plan, rules, regulations, programs, and enforcement practices that impact their ability to attain and maintain that NAAQS;
 - iii) Data regarding stationary sources in the district, including monitoring and enforcement of those sources;
 - iv) ARB's plan, programs, rules, or regulations developed to meet the provisions of this bill; and
 - v) Any other data relevant to the district's ability to attain and maintain that NAAQS including the impact of nonattainment on public health in the district and in the state.

Background

- 1) *National Ambient Air Quality Standards (NAAQS) and attainment.* The Federal Clean Air Act (FCAA) of 1963 protects public health and environmental quality by limiting and reducing pollution from various sources. Under the FCAA, the US EPA establishes NAAQS that apply to outdoor air throughout the country. In 1969 and 1971, ARB set the first air quality standards for ozone, Particulate Matter (PM), oxides of nitrogen (NO_x), oxides of sulfur (SO_x), and carbon monoxide due to their negative impacts on public health above specified concentrations. The federal government followed suit and set NAAQS for six "criteria pollutants." These included ground-level ozone, PM,

NO_x, SO_x, carbon monoxide, and added lead. Now, the US EPA reviews each NAAQS at five-year intervals to ensure that the standards are based on the most recent scientific information, and periodically issue more health-protective standards.

Regions that do not meet the national standards for any one of the standards are designated “nonattainment areas.” There are several nonattainment designations ranging from concentrations slightly above the standard, termed marginal nonattainment, to extreme nonattainment, where pollution levels far exceed the national standard. The FCAA sets deadlines for attainment based on the severity of nonattainment and requires states to develop comprehensive plans, known as the state implementation plan (SIP), to attain and maintain air-quality standards for each area designated nonattainment for a NAAQS. ARB is the lead agency for all purposes related to the SIP. Local air districts and other agencies, such as the Bureau of Automotive Repair and the Department of Pesticide Regulation, prepare SIP elements and submit them to ARB for review and approval. ARB forwards SIP revisions to US EPA for approval and publication in the Federal Register.

- 2) *The San Joaquin Valley’s air quality is uniquely bad due to uniquely difficult geographic, meteorological, and industrial conditions.* The San Joaquin Valley (Valley) is surrounded by mountain ranges which trap air pollutants within the air basin. The Valley’s weather conditions include frequent periods of high pressure, temperature inversions, long, hot summers, and stagnant, foggy winters, all of which are conducive to the formation and retention of air pollutants. This problem is exacerbated by high levels of pollution emission from heavy vehicle traffic along I-5 and highway 99, locomotive traffic, tractors and irrigation pumps from the agriculture industry, flares from fossil fuel extraction, and smoke from wood-burning stoves and fireplaces. The air pollution crisis has only worsened as wildfires become more common and generate even more pollutants that become trapped in the Valley. These factors have led to the air quality in the Valley consistently being ranked among the worst in the country by such groups as the World Health Organization, the American Lung Association, and the US EPA.
- 3) *The Valley’s attempts to reach attainment have been delayed time and time again.* In 2004-2005 the San Joaquin Valley was found by the US EPA to be in serious nonattainment of the ozone and nonattainment of the PM 2.5 1997 NAAQS. ARB was directed to develop a SIP that was eventually accepted by the US EPA that would result in achieving attainment for ozone pollutants within 9 years. However, as the deadline approached it became clear that the air district would not achieve attainment by these dates. In order to address this

the San Joaquin Valley was reclassified to being in extreme nonattainment of ozone NAAQS in 2010, extending the deadline a further 11 years.

In the initial designation of nonattainment for PM 2.5 pollution, the Valley was given a deadline of 2010 to reach attainment. However, through a process of six SIP revisions during the next five years, the Valley was able to attain extension of the deadline to 2015 and was eventually reclassified to being in moderate nonattainment. As the 2015 deadline approached it became clear that the area could not practicably reach attainment by the deadline, so the US EPA once again reclassified the Valley to serious nonattainment and extended the deadline. In the years leading up to today, the US EPA has continued to make findings of failure to submit a complete SIP, due to rejecting various portions of the submitted plans. Finally, on January 28, 2022, US EPA issued a finding that the Valley had attained the standard by December 31, 2020, though they will need to continue to work to maintain attainment and achieve the new attainment standards set in 2006 and 2012. The plans to do this continue to only be partially approved by the US EPA, in part due to litigation brought by community organizations causing the federal appeals court to rule the US EPA erred in approving portions of the plan.

It is worth noting that a finding of attainment of the FCCA pollutant levels is not dependent upon an average of measurements in a region – if any sensor within a region is above attainment levels the whole region is found to not be in attainment. This is important because certain sensors are known to have been installed at points that have developed uniquely high levels of pollution (i.e. near an airfield) leading to skewed data. Similarly, events like wildfires, well outside of the control of the local air district, can have severe impacts on pollution levels and cause a district to be out of attainment despite their best efforts. As such, the US EPA has processes for modifying these data measuring criteria that ARB had to use in order to reach the finding of attainment. So, even though the Valley may technically be in attainment, PM 2.5 levels may, in specific areas in the Valley, may still be well above attainment levels because of disasters or localized sources of pollution.

- 4) *Having pollutant level above a NAAQS can lead to severe health impacts.* The NAAQS are the result of an intensive science assessment process and risk exposure assessments to determine levels that will protect human and environmental health. Numerous scientific studies have linked exposure to airborne PM2.5 to increased severity of asthma attacks, development of chronic bronchitis, decreased lung function in children, respiratory and cardiovascular hospitalizations and even premature death in people with

existing heart or lung disease. PM2.5 exposure is responsible for about 1,200 cases of premature death in the Valley each year.

Ozone pollution, commonly referred to as smog, acts as a powerful lung irritant causing inflammation and other damage. Scientific research has shown that exposure to ozone is associated with development of asthma in children, development of chronic obstructive pulmonary diseases, increased allergic responses, and a host of other negative impacts.

- 5) *Health impacts from air pollution are often concentrated in disadvantaged communities.* The health burden of air pollution depends on several key factors including exposure to the pollutant, susceptibility to its effects, access to healthcare, and psychological stress. Because of historic practices of redlining and other discriminatory practices and policies people of color are disproportionality located in areas closer to sources of air pollution. There is also evidence that having low income also increases risk from air pollution due to having fewer resources to relocate away from sources as well as less access to quality and affordable healthcare.
- 6) *Not achieving attainment can theoretically result in serious sanctions.* If not addressed in the next year, disapprovals of portions of the SIP require the US EPA to dictate that for every pound of emissions that the air district permits at a new or modified facility, the air district must scrub 2 pounds of emissions from somewhere else. If the Valley's plan is not submitted and approved within six months, the US EPA will apply highway funding sanctions that will prevent all federal highway funds not used for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance. California has been at risk of suffering these sanctions several times in the past and has been able to provide an accepted SIP or obtain extensions in time to prevent sanctions.

Comments

- 1) *Purpose of Bill.* According to the author, "Air pollution in the Central Valley contributes to the highest asthma rates in California, with 1 in 4 children being diagnosed with asthma. In 1997, the U.S. EPA set ambient air quality standards to address the grave health impacts of air pollution. The San Joaquin Valley has yet to meet these standards, let alone more recent ones. AB 2550 identifies key actions for CARB to take on the district level to provide additional monitoring and enforcement capacity, engage with impacted communities, and guide stationary source control until the 1997 air standards are reached. AB

2550 leverages both state and local resources to reach healthy air standards as expediently as practicable.”

- 2) *Action is needed to achieve attainment and save lives.* Every year that passes without reaching attainment is another year that the approximately four million people who live in the San Joaquin Valley are exposed to hazardously high levels of pollution. The burdens are felt heaviest by disadvantaged communities, especially communities of color, and the continued pushing back of attainment deadlines deepens experiences of betrayal and feelings of mistrust of the air district. Solving this problem quickly would require large changes beyond the already strict regulations in place, like radically changing the transportation patterns and industrial sectors of the Valley to eliminate emissions sources, expansions of incentive programs to replace polluting vehicles, and investment in forest management practices to reduce the amount of wildfire smoke that becomes trapped in the Valley.
- 3) *What actions does this bill require ARB to take?* This bill lays out four main actions ARB must engage in to accelerate reaching attainment.

First is to coordinate with community groups and the air district, perform outreach to underserved communities to identify gaps in the SIP and the district’s attainment plan. Given that the adoption of these plans is already accompanied by a public hearing, the primary value seems to come from the requirement of outreach to communities to obtain engagement from people who may not have been able to be involved in the initial hearings.

Secondly, the bill requires ARB to engage in additional monitoring and provide additional enforcement capacity for stationary sources. While additional monitoring might allow for the identification of previously overlooked stationary sources, the authors and proponents have not made a case that the local district’s enforcement capability is insufficient to achieve compliance with their regulations.

Thirdly, the bill requires ARB to hold a public hearing to review the SIP, gaps in achieving the SIP, actions to achieve attainment, and the effect of air pollution on the local district. This hearing is not necessarily duplicative with the required public hearings for SIP because it requires a retrospective review of the failures of previous SIPs to try to prevent further delays in achieving attainment. Additional public hearing would also allow members of the community who have been suffering under these terrible air conditions to further to engage with ARB and make their concerns known.

While the benefit of these requirements in reducing air pollution and obtaining attainment may be marginal, they certainly are not detrimental. However, neither do they require the final requirement of this bill: for ARB to use the authority it has to supersede local control of the air district by developing rules and regulations that have the same authority as those of the district and that the district must enforce.

- 4) *Will overriding local control accelerate achieving attainment?* One of the major concerns raised by opponents of this bill is that it removes local control from the air district and gives the authority to ARB to regulate stationary sources within the district. While the Valley had technically reached attainment for PM 2.5, it has a long history of requiring extensions of deadlines or reclassification of attainment in order to avoid penalties. This has led to brief windows of time when the Valley has been out of attainment. If this trend continues, it is likely that under this bill the Valley will oscillate between local control and ARB control of local emissions sources as extensions are processed and approved by the US EPA, making regulation more difficult.

ARB already has the authority to override local control by rejecting proposed plans from the local district to reach attainment. They have not chosen to exercise this power in the past, which raises questions if they will choose to act any differently if forced to take control. Given that local air districts have more expertise in regulating stationary sources than ARB, it seems unlikely ARB would choose to take actions beyond their current plans. Furthermore, many of the sources of air pollution in the Valley come from mobile sources and not stationary sources and so fall outside the district's control. The local air districts contend that the correct way to deal with this problem is to provide more incentives for addressing mobile sources and not to tighten regulations that are already the strictest in the country. The proponents of this bill contend that the repeated delays of achieving attainment show that the current regulations are insufficient and must be tightened. However, this bill does not mandate ARB to tighten regulations, only mandate that they supersede local control in their already required duty to reach attainment.

The requirement for ARB to supersede local control seems unlikely to lead to stronger rulemaking that will lead to faster attainment and will disrupt the close working relationship of ARB and the local air districts. Furthermore the other components of this bill do not require superseding local control in order to be enacted or effective at addressing the Valley's air crisis.

The committee may wish to consider amending the bill to remove the requirement for ARB to develop plans, programs, and rules, for attainment

that has the same authority as those made by the district and that shall be enforced by the district and instead require implementation of rules or programs to reach and maintain attainment based on the public review process in this bill.

- 5) *Staff recommends the committee adopt the bolded amendments contained in comment 4, above.*

Related/Prior Legislation

SOURCE: Author

SUPPORT:

Active San Gabriel Valley
California Environmental Voters (formerly Clcv)
Ceja Action
Center for Climate Change and Health
Center for Race, Poverty, and The Environment
Central California Asthma Collaborative
Central California Environmental Justice Network
Central Valley Air Quality Coalition
Clean Water Action
Coalition for Clean Air
Earthjustice
Families Advocating for Chemical and Toxics Safety
Fresno Building Healthy Communities
Leadership Counsel for Justice and Accountability
Leap
Little Manila Rising
Mi Familia Vota
National Parks Conservation Association
NRDC
Physicians for Social Responsibility - Los Angeles
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Sacramento Area Congregations Together
Sierra Club California
The Climate Center
Valley Improvement Projects

OPPOSITION:

Adsum, Sjv, INC.
Agricultural Council of California
California Air Pollution Control Officers Association
California Cotton Ginners and Growers Association
California Farm Bureau
California Fresh Fruit Association
California Hispanic Chambers of Commerce
California State Association of Counties
California Walnuts
City of Bakersfield
City of Clovis
County of Fresno
County of Kern
County of Merced
County of San Joaquin
County of Stanislaus
Craig Tristao, Coleman & Horowitz, Llp
Far West Equipment Dealers Association
Kings County Farm Bureau
Kings; County of
Madera County
Madera County Farm Bureau
Manufacturers Council of The Central Valley
Milk Producers Council
Rural County Representatives of California
San Joaquin Valley Air Pollution Control District
Southern California Gas Company
Stanislaus County
Stanislaus County Farm Bureau
Tulare County Farm Bureau
Tulare; County of
Urban Counties of California
Western Agricultural Processors Association
Western Plant Health Association
Western States Petroleum Association
Wine Institute

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