ORAL ARGUMENT NOT YET SCHEDULED
No. 20-71196

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Center For Biological Diversity;
Center For Environmental Health,
Petitioners,

v.

U.S. Environmental Protection Agency; Andrew Wheeler, Administrator of the U.S. Environmental Protection Agency,
Respondents.

On Petition for Review of Final Action by the
U.S. Environmental Protection Agency

BRIEF OF *AMICUS CURIAE* IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT IN SUPPORT OF RESPONDENTS, SUPPORTING DENIAL OF THE PETITION

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STATEMENT PURSUANT TO RULE 29

Pursuant to Fed. R. App. P. 29(a)(2), *Amicus* states that all parties to this proceeding have consented to the filing of this brief.

Pursuant to Fed. R. App. P. 29(a)(4)(E), *Amicus* states that no party or party's counsel authored this brief in whole or in part, and that no person other than *Amicus* or its counsel contributed money that was intended to fund preparing or submitting the brief.

Dated: October 28, 2020

/s/ Rick R. Rothman
Rick R. Rothman

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IDENTITY AND INTERESTS OF *AMICUS*

Imperial County Air Pollution Control District is one of California's 35 local air districts. It is responsible for air quality planning, monitoring, and stationary source and facility permitting in Imperial County. In collaboration with the California Air Resources Board, the District responded to EPA's request for a revised State Implementation Plan for the 2008 8-hour ozone standard by submitting such a revised plan. EPA's approval of the District's plan is the subject of this litigation.

INTRODUCTION

Imperial County is located in the southwest corner of California adjacent to the U.S.-Mexico border, just north of the Mexican city of Mexicali. Due in part to emissions of nitrogen oxides ("NO_x") and volatile organic compounds ("VOCs") from Mexico, concentrations of ground-level ozone in Imperial County are above the 2008 8-hour ozone National Ambient Air Quality Standard ("NAAQS") under the Clean Air Act.

In 2016, EPA designated Imperial County as a moderate nonattainment area for the 2008 8-hour ozone NAAQS and required the state of California to submit a revision to its State Implementation Plan ("SIP") to address ozone in Imperial County by July 20, 2018. In order to comply with this requirement, the Imperial County Air Pollution Control District ("the District") developed a 426-page SIP revision that included a comprehensive plan for addressing ozone in Imperial County, from a complete inventory of ozone precursor emissions to an evaluation of the District's rules and nonattainment New Source Review ("NSR") permitting-review program for new stationary sources. Pursuant to Section 179B of the Clean Air Act, the District determined in the SIP revision that Imperial County would meet the 2008 8-hour ozone NAAQS by the attainment date but for emissions from Mexico.

EPA reviewed the District's SIP revision and approved it in February 2020. In doing so, EPA addressed a comment by Petitioners, who argued that Section 179B required the District to demonstrate that it would have continued to maintain the 2008 8-hour ozone NAAQS *after* the attainment date but for emissions from Mexico. EPA did not take a position one way or the other on what Section 179B requires—instead, it responded that the District's SIP revision was sufficient to demonstrate that the 2008 8-hour ozone NAAQS would have been both attained by the attainment date and maintained thereafter.

Petitioners here do not challenge the vast majority of the District's SIP revision or EPA's approval. Nor do they dispute the District's finding that the 2008 8-hour ozone NAAQS would be attained by the attainment date but for emissions from Mexico. Their only argument is that Section 179B requires a determination that, but for international emissions, the relevant NAAQS will be maintained after the attainment date.

Petitioners are wrong about what Section 179B requires. But more fundamentally, their argument is a red herring—EPA concluded that the District's SIP revision was sufficient *even if* a state must demonstrate continued maintenance of a NAAQS under Section 179B. Petitioners have no substantive dispute with EPA's conclusion that the District's plan will continue to maintain the 2008 8-hour ozone NAAQS, and their additional procedural arguments lack merit.

SUMMARY OF THE ARGUMENT

Section 179B of the Clean Air Act requires a State to show that it would have "attained" and "maintained" a NAAQS "by the attainment date." The phrase "by the attainment date" in Section 179B sets a single deadline for both the requirement to demonstrate attainment of the NAAQS and the requirement to demonstrate maintenance.

Petitioners contend that the single phrase "by the attainment date" simultaneously means "*before* the attainment date" (for purposes of when a state must "attain" the NAAQS) and "*after* the attainment date" (for purposes of when a state must "maintain" the NAAQS). That flouts the most basic rules of statutory interpretation. *See Clark v. Martinez*, 543 U.S. 371, 378 (2005) ("To give these same words a different meaning for each category would be to invent a statute rather than interpret one."). And Petitioners' construction of Section 179B has no limitation—it provides no answer for *how long after the attainment date* a State must demonstrate the NAAQS would be maintained.

Petitioners are asking the Court to engage on this statutory question even though it is not squarely presented in this case. EPA's approval of the District's SIP revision does not depend on any particular reading of Section 179B. EPA concluded that, even if the District's SIP must demonstrate maintenance of the

2008 8-hour ozone NAAQS for some period after the attainment date, the District's SIP meets that requirement.

The record amply supports EPA's conclusion. First, emissions modeling data already submitted to EPA by the District and the state of California show that emissions of NO_x and VOCs in Imperial County and other upwind locations in California are projected to decline by 2030. Second, the District's ozone SIP revision includes a variety of technological control measures, a nonattainment NSR review program for new stationary sources, and other requirements that together ensure local contribution to ozone levels in Imperial County will remain at or below its current levels. And third, other projects by state and federal agencies that are not allowed to be included as part of the District's SIP are contributing to additional ozone reductions in Imperial County.

Petitioners do not present evidence contradicting EPA's conclusion. Rather, Petitioners invoke the "logical outgrowth" principle and accuse EPA of failing to explain its interpretation of Section 179B in the proposed rule. The "logical outgrowth" principle is another red herring; it applies only when an agency makes substantive changes between the final and proposed rules. Here, the final rule was identical to the proposed rule. Petitioners might not have anticipated EPA's response to their comment, but that is exactly how the notice-and-comment process is supposed to work under the Administrative Procedure Act.

EPA's approval of the District's SIP revision is both substantively and procedurally sound, and Petitioners' petition should be denied.

ARGUMENT

I. UNDER SECTION 179(B), A STATE NEED ONLY DEMONSTRATE ATTAINMENT AND MAINTENANCE "BY" THE ATTAINMENT DATE BUT FOR INTERNATIONAL EMISSIONS.

Petitioners' argument that Section 179B requires a State to demonstrate perpetual and indefinite maintenance of a NAAQS is contrary to the plain language of the statute. Section 179B provides in relevant part that EPA shall approve a SIP or SIP revision when:

> the submitting State establishes to the satisfaction of [EPA] that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards *by the attainment date* . . . but for emissions emanating from outside of the United States.

42 U.S.C. § 7509a(a) (emphasis added). The key prepositional phrase ("by the attainment date") modifies both "attain" and "maintain" in Section 179B, so whatever the phrase means, it means the same thing for both verbs. *See Clark*, 543 U.S. at 378. When used with a specific time or date, the preposition "by" indicates that something must occur "not later than" that time or date. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 307 (3d Ed. 1965). Putting this all together, Section 179B requires a State to show, not just that it would have attained a NAAQS by the attainment date, but that it also would have maintained the

NAAQS by the attainment date. In other words, the State's duty to demonstrate that it would have attained the NAAQS and its duty to demonstrate that it would have maintained the NAAQS both extend to the attainment date, not an undefined amount of time into the future.

Contrary to Petitioners' suggestion, interpreting the attainment date as the end point for the State's demonstration does not "fail[] to give effect to the maintenance language." Pet'rs. Br. 20. The requirement to "maintain" the NAAQS until the attainment date ensures that a State's plan cannot be approved if it would attain the standard at some point but fail to maintain it until the attainment date. A wrestling coach who instructs her star wrestler to "attain and maintain lightweight status by the end-of-year meet" is saying, *in effect*, that the wrestler must reach his weight goal before the meet ("attain") and hold it until the meet ("maintain"); the coach is providing no instruction about the wrestler's post-meet weight. So too here. The District could not, for example, have submitted a SIP revision that demonstrated it would attain the 2008 8-hour ozone NAAQS but for emissions from Mexico by 2015 and stopped there—it needed to demonstrate that attainment would continue until the attainment date of July 20, 2018.

Petitioners' interpretation of "by the attainment date" actually renders that phrase completely meaningless. In Petitioners' view, the State has to demonstrate that the NAAQS would be maintained *indefinitely* but for international emissions.

Whatever "by the attainment date" means, it does not mean "forever." Petitioners' approach would make it practically impossible for any State to demonstrate that its SIP would maintain a NAAQS but for international emissions; States cannot model or predict until the end of time. Congress could not have intended that result. Indeed, in other provisions where Congress created an ongoing requirement to plan for maintenance of NAAQS, it set out an explicit term of years for that requirement. *See* 42 U.S.C. §7505a (requiring a State that requests redesignation of a nonattainment area after it attains a NAAQS to submit a plan for maintenance of the NAAQS for at "least 10 years after the redesignation").

Tellingly, states are not required to demonstrate maintenance after the attainment date in an ordinary compliance demonstration outside of Section 179B. Instead, as Petitioners put it in their comments to EPA, "for a nonattainment area not impacted by international border emissions, the state must generally submit an attainment plan that provides for attainment *by the applicable attainment date*." ER 0101 (emphasis added); *see* 42 U.S.C. § 7502(c)(1). Section 179B thus puts States that are affected by international emissions on a level playing field with those that are not, rather than creating an additional maintenance obligation unique to Section 179B.

Petitioners contend that if Section 179B does not include its own obligation to demonstrate maintenance of the NAAQS after the attainment date, it would

create a "structural hole" in the Clean Air Act's scheme. Pet'rs. Br. 23, 26–27. The crux of Petitioners' argument is that a State that uses Section 179B could theoretically never be redesignated from "non-attainment" to "attainment," and the State would therefore never need to submit a maintenance plan under Section 175A or otherwise revisit its SIP. However, even if an area subject to Section 179B is never redesignated, that does not mean it no longer has any obligations. To the contrary, that area will continue to be subject to its existing SIP that must comply with the requirements for a non-attainment area. *See* Section II.B, *infra*. The possibility that a State could avoid a future procedural requirement—a maintenance plan submission—is hardly a "hole" when the substantive requirements of the State's SIP would continue to protect air quality.

Indeed, the District is already complying with its nonattainment area obligations and is committed to reducing emissions of ozone precursors in Imperial County. The District continues to monitor data, review District rules, and support efforts on both sides of the border to assist in reducing emissions. And because the District lacks authority to regulate Mexican sources of ozone precursors directly, there is only so much it can do to reduce the impact of ozone precursors that enter Imperial County from Mexico.

To the extent Petitioners are arguing the District should be required to submit a maintenance plan under section 175A now, that makes no sense. A State

cannot simultaneously be in non-attainment and maintaining its compliance with the NAAQS. The requirement to submit a maintenance plan is only triggered when a State "submits a request under section 7407(d) of this title for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant." 42 U.S.C. § 7505a(a).

Moreover, it is far from clear that a State that relies on Section 179B would never submit a maintenance plan or otherwise be required to revise its SIP. If the air quality in an area improved to the extent the area met the relevant NAAQS without adjusting for the impact of international emissions, the State might choose to redesignate the area. EPA also updates its NAAQS periodically, which could require the State to take additional control measures—in fact, EPA lowered the ozone NAAQS in 2015. Moreover, EPA has taken the position that it can always call for revisions to an underperforming State's SIP under Section 110(k)(5). ER 0005. Thus, if emissions in an area worsened over time to the extent the area was no longer attaining the NAAQS regardless of international emissions, EPA would have the ability under Section 110(k)(5) to require a plan revision.

II. THE DISTRICT'S SIP REVISION ENSURES THAT, BUT FOR INTERNATIONAL EMISSIONS, THE 2008 8-HOUR OZONE NAAQS WOULD BE MAINTAINED AFTER THE ATTAINMENT DATE.

The Court does not need to resolve the proper interpretation of Section 179B to decide this case. EPA did not decide precisely what Section 179B requires—it found that Section 179B could be read to require maintenance of the NAAQS only until the attainment date *or* that it could be read to require maintenance for some period of time afterwards. ER0004. EPA then concluded that the District's SIP was sufficient *even if* Section 179B requires maintenance of the NAAQS after the attainment date, because the SIP will ensure the NAAQS continue to be maintained. *Id.* That conclusion is supported by emissions modeling performed by the State of California and the District, the provisions of the District's SIP itself, and additional projects that will further reduce ozone in Imperial County.

A. Modeling Demonstrates that the District Will Continue to Maintain Compliance with the NAAQS but for Emissions from Mexico.

In its approval, EPA found that the District would continue to maintain the 2008 8-hour ozone NAAQS but for emissions from Mexico based on emissions modeling showing emissions were projected to decrease in future years. ER 0004. While the District did not submit emissions data for years beyond the attainment date as part of its SIP revision, EPA was able to rely on several sources of

modeling data that the District and California had already put before the agency. *Id.*

First, the District and CARB submitted emission inventory projections through 2030 as part of the District's redesignation request for the particulate matter less than 10 microns in diameter (PM_{10}) NAAQS. ER 0004; *see also* Imperial County Air Pollution Control District, *2018 Redesignation Request and Maintenance Plan for Particulate Matter Less Than 10 Microns in Diameter (PM10)* (Oct. 23, 2018), *available at* https://ww3.arb.ca.gov/planning/sip/planarea/imperial/sip.pdf. Because the precursors of ozone—VOCs and NO_x—are also subject to regulation under the particulate matter NAAQS, the District's redesignation request included the projections for both of those compounds. ER 0005. The District's inventory demonstrates that emissions of both are expected to decline in Imperial County through 2030. Specifically, the inventory projects that annual average NO_x emissions will decline from 17.14 tons per day in 2016 to 11.77 tons per day in 2030 and that annual average VOC emissions will decline from 15.26 tons per day in 2016 to 14.51 tons per day in 2030. *Id.*

Second, the California Emissions Projection Analysis Model ("CEPAM") maintained by the California Air Resources Board projects similar decreases in ozone precursors in Imperial County over the same time period. EPA 0004; *see also* California Air Resources Board, *CEPAM 2016 SIP – Standard Emission Tool*

(last updated July 18, 2018), https://www.arb.ca.gov/app/emsinv/fcemssumcat/fcemssumcat2016.php (hereinafter "CEPAM Model"). The CEPAM model projects that NO_x emissions in Imperial County will decline from 17.14 tons per day in 2016 to 11.77 tons per day in 2030 and that reactive organic gasses from anthropogenic sources will decline from 15.26 tons per day in 2016 to 14.51 tons per day in 2030. *See* CEPAM Model.

Third, the CEPAM model demonstrates that ozone precursor emissions in areas of California upwind from Imperial County are projected to decline by 2030. ER 0004. For example, NO_x emissions in the South Coast Air Basin are projected to decline from 306.5 tons per day in 2020 to 204.9 tons per day in 2031, and emissions of reactive organic gases from anthropogenic sources are projected to decline from 367.2 tons per day in 2020 to 341.7 tons per day in 2031. *Id.*; *see also* CEPAM Model. Those projected emissions reductions will further contribute to lower concentrations of ozone precursors in Imperial County.

Each of those sources of emissions projections was before EPA at the time it approved the District's SIP revision. EPA therefore rationally concluded that the 2008 8-hour ozone NAAQS would continue to be maintained but for international emissions under the District's SIP.

B. The Requirements in the District's Revised SIP Will Ensure that Compliance with the 2008 8-hour Ozone NAAQS Is Maintained but for Emissions from Mexico.

EPA's conclusion is further supported by the numerous emissions reduction measures in the District's SIP, which will remain in place after the attainment date. The District's ozone SIP revision complies with all required elements of a SIP in a moderate ozone non-attainment area, which include:

- A comprehensive inventory of emissions;
- A demonstration of reasonable further progress ("RFP") towards attainment;
- An analysis of reasonably available control measures ("RACM") and reasonably available control technology ("RACT");
- An analysis of and commitments to a nonattainment new source review ("NSR") permit program, including emission offsets at a ratio of 1.15 to 1;
- An attainment demonstration; and
- Contingency measures in the event the area fails to demonstrate RFP.

Ex. A at 10 (Imperial County Air Pollution Control District, *Imperial County 2017 State Implementation Plan for the 2008 8-Hour Ozone Standard* (Sept. 2017)); *see* 42 U.S.C. § 7511a(b). Each of those requirements help ensure that ozone in Imperial County will remain below the 2008 8-hour ozone NAAQS but for emissions from Mexico. In particular, the District's nonattainment NSR permitting

program and its implementation of RACM and RACT will both continue to limit ozone precursor emissions in Imperial County after the attainment date.

The District's nonattainment NSR Program, codified as District Rule 207, sets forth a detailed set of preconstruction review requirements for stationary sources to ensure that they do not interfere with attainment or maintenance of NAAQS. *See* Ex. B (Imperial County Air Pollution Control District Rule 207). Under Rule 207, new or modified stationary sources must apply Best Available Control Technology (BACT) to reduce emissions of pollutants including NO_x and VOCs. Ex. B at 3, 14. In addition, new or modified sources with emissions above certain thresholds must obtain emissions reduction credits to offset the additional emissions. *Id.* at 16. And because Imperial County is a moderate non-attainment area, stationary sources must obtain those credits at a 1.15 to 1 ratio, thus offsetting *more* emissions than the additional emissions they would be permitted to generate. Ex. A at 6-2. The District's ozone SIP revision included a review of the District's nonattainment NSR program and ensured that it met Clean Air Act requirements. *Id.*

The District's implementation of RACT requires existing sources to reduce emissions through use of cost-effective technologies or equipment, and its implementation of RACM establishes similar requirements for non-technological emissions reduction methods. Ex. A at 6-1. As just one example, gasoline service

stations must implement a set of design criteria that minimizes the release of gasoline vapors during storage tank filling and vehicle filling. Ex A, App. B at 7. The District's RACT requirements include similar requirements for source categories ranging from stationary internal combustion engines to cement kilns to utility boilers. Ex. A, App. B at 7–12. As with the District's nonattainment NSR program, the District examined its RACT and RACM requirements in its SIP revision and determined that they would ensure attainment of the 2008 8-hour ozone NAAQS but for emissions from Mexico. Ex. A at 6-11, 7-2–7-3.

The District's nonattainment NSR program, RACT and RACM requirements, and other elements of the District's SIP will continue to ensure emissions reductions after the attainment date for the 2008 8-hour ozone NAAQS. These requirements demonstrate that there is no "structural hole" in Section 179B—the Clean Air Act ensures that a set of control measures continues to reduce emissions after approval of a SIP under that provision. Indeed, the District's SIP will continue to require the measures applicable to moderate nonattainment areas, such as the 1.15 to 1 ratio for emissions reductions credits and the continued review of RACT and RACM.

C. Additional Programs Outside of the District's SIP Will Further Ensure the 2008 8-hour ozone NAAQS Is Maintained.

In addition to the requirements of the District's SIP, there are other ongoing projects that will continue to improve Imperial County's air quality. For example,

the U.S.-Mexico Border 2020 program—a collaboration of state and federal agencies and their Mexican counterparts focused on environmental issues—has several components that will improve air quality in Imperial County, including reducing emissions of NO_x and VOCs. *See* Ex. A at 8-11; EPA, *U.S.-Mexico Border 2020 Program*, https://www.epa.gov/usmexicoborder (last visited Oct. 14, 2020). One example is a vehicle idling study being conducted at the Calexico East and West border entry points. Ex. A at 8-11. That study will work to quantify emissions that result from vehicle idling at the border and identify strategies to reduce those emissions. *Id.*

Another example is the Imperial County – Mexicali Air Quality Work Plan, a collaboration between the District, the State of California, and agencies in Baja California, Mexico to explore additional actions to improve air quality in the border region. *See* California Air Resources Board, *Imperial County – Mexicali Air Quality Work Plan to Improve Air Quality in the Border Region* (Dec. 5, 2018), *available at* https://ww3.arb.ca.gov/planning/border/workplan.pdf. The Work Plan outlines a set of concrete actions that agencies in both Imperial County and Mexicali plan to take. *Id.* Those actions include a number of measures that will reduce emissions of NO_x and VOCs, such as improving education about practices that affect air quality, taking steps to reduce agricultural burning, and enhancing vehicle emissions inspections. *Id.*

Those projects and similar joint efforts to improve air quality in the border region provide yet another layer of assurance that the 2008 8-hour ozone NAAQS will continue to be maintained in Imperial County after the attainment date but for emissions from Mexico.

III. PETITIONERS' PROCEDURAL ARGUMENTS ARE MERITLESS.

Because there is no substantive basis to refute EPA's conclusion that the District's SIP would attain and maintain the 2008 8-hour ozone NAAQS but for emissions from Mexico, Petitioners focus much of their brief on arguments that EPA failed to meet various procedural requirements. In particular, Petitioners allege that EPA's final rule was not a "logical outgrowth" of the proposed rule because EPA did not explain that it might interpret Section 179B as imposing an obligation to demonstrate maintenance past the attainment date. Pet'rs. Br. 32–39. That argument completely misconstrues the logical outgrowth test and subverts the purpose of notice-and-comment rulemaking.

A "final regulation that varies from the proposal, even substantially, will be valid as long as it is 'in character with the original proposal and a logical outgrowth of the notice and comments.'" *Envtl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 851 (9th Cir. 2003). Here, the final approval of the District's SIP was functionally identical to the proposal—the only difference was that EPA provided further explanation of how Section 179B might be interpreted. *Compare* ER

0001–0006 *with* ER 0019–0030. That is not the type of important, substantive change that would render the final rule so different from the proposal that the proposal failed to give effective notice to interested parties. *C.f. Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994) (finding that a final rule was not a logical outgrowth of the proposal where the proposal included no discussion of an important regulatory change).

Rather than failing to provide notice, EPA did exactly what it was supposed to do—it responded to comments it received. *Kooritzky*, 17 F.3d at 1513 ("Agencies should be free to adjust or abandon their proposals in light of public comments or internal agency reconsideration without having to start another round of rulemaking."). Indeed, it was *Petitioners' comments* regarding the same issues raised in this lawsuit that caused EPA to respond in the final rule by explaining its interpretation of Section 179B. There is therefore no question that the proposal gave Petitioners sufficient notice to provide informed comments. Accordingly, EPA's decision complied with the notice-and-comment requirements of the APA, including the logical outgrowth standard.

IV. IT IS UNDISPUTED THAT THE DISTRICT'S SIP WOULD ATTAIN THE 2008 8-HOUR OZONE NAAQS BY THE ATTAINMENT DEADLINE BUT FOR EMISSIONS FROM MEXICO.

Petitioners do not dispute the conclusion in the District's SIP that the 2008 8-hour ozone NAAQS would be attained by the attainment date but for emissions

from Mexico or EPA's concurrence with that finding. And with good reason—the District made that determination through both photochemical grid modeling and a weight-of-evidence analysis based on current scientific consensus, EPA guidance, and technical input from a variety of state and federal agencies. Ex. A at 8-1–8-2.

The photochemical grid modeling featured in the District's SIP used monitoring data from three monitoring sites in Imperial County and simulated emissions data from Mexico to confirm that the 2008 8-hour ozone NAAQS would be attained but for international emissions. In fact, the modeling analysis found that the 2008 8-hour ozone NAAQS would be attained even without adjusting for emissions from Mexico at two out of the three monitoring sites. *Id.* The third site was projected to have an ozone concentration of 79 parts per billion—slightly above the 75 parts per billion 2008 8-hour ozone NAAQS. *Id.* When the photochemical model was then adjusted for the simulated impact of emissions from Mexico, projected ozone concentrations at the three sites dropped by between 3 and 13 parts per billion, and all three sites were projected to be below the 75 parts per billion NAAQS. *Id.*

The District's weight-of-evidence analysis further supports the District's conclusion that the 2008 8-hour ozone NAAQS would be attained but for emissions from Mexico. Per EPA's guidance for areas with attainment dates in the near future, the District's weight-of-evidence analysis looked at recent trends in

ambient air quality and emissions to corroborate its modeling findings. *Id.* at 8-5. The District found that emissions of NO_x in Imperial County had decreased by approximately 54 percent since 2000 and emissions of VOCs had decreased by about 39 percent over the same time frame. *Id.* at 8-6. That historical decrease in emissions indicated that further decreases could be expected in the future, particularly given that past emissions had followed a relatively consistent downward trend. *Id.*

The District's analysis demonstrates that it correctly concluded that it would attain the 2008 8-hour ozone NAAQS but for emissions from Mexico. EPA therefore reasonably and appropriately approved the District's SIP revision.

CONCLUSION

For the reasons stated above, the petition should be denied.

Dated: October 28, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Circuit Rule 32-1, I hereby certify:

1. this brief complies with the type-volume limitation set forth in Rule 29(a)(5) of the Federal Rules of Appellate Procedure because this brief contains 4,504 words, excluding the parts of the brief exempted from the type-volume calculation by Federal Rule 32(a)(7)(B)(iii); and
2. this brief complies with the typeface and type-style requirements of Rules 32(a)(5) and 32(a)(6) of the Federal Rules of Appellate Procedure because this brief is formatted in Microsoft Word using a proportionally spaced typeface in 14-point Times New Roman font.

Dated: October 28, 2020

/s/ Rick R. Rothman
Rick R. Rothman

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2020, I electronically filed a copy of the foregoing with the Clerk of the Court using the Court's CM/ECF system, who will send a notice of electronic filing to all counsel.

/s/ Rick R. Rothman
Rick R. Rothman