

State of California
AIR RESOURCES BOARD

Resolution 05-35

June 23, 2005

Agenda Item No.: 05-6-02

WHEREAS, sections 39600 and 39601 of the Health and Safety Code (HSC) authorize the Air Resources Board (ARB/Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, HSC section 39003 identifies the Board as the state agency charged with coordinating efforts to attain and maintain ambient air quality standards;

WHEREAS, HSC section 39011.5(a)(1), enacted by Statutes of 2003, Chapter 479 (SB 700, Florez), defines "agricultural source of air pollution" to include "a confined animal facility, including, but not limited to, any structure, building, installation, barn, corral, coop, feed storage area, milking parlor, or system for the collection, storage, treatment, and distribution of liquid and solid manure, if domesticated animals, including, but not limited to, cattle, calves, horses, sheep, goats, swine, rabbits, chickens, turkeys, or ducks are corralled, penned, or otherwise caused to remain in restricted areas for commercial agricultural purposes and feeding is by means other than grazing";

WHEREAS, HSC section 40724.6(a) requires ARB to develop a definition of a "large confined animal facility (large CAF) by July 1, 2005; in developing this definition, the ARB is to review relevant scientific information including air quality impacts, how confined animal facilities may affect the attainment and maintenance of ambient air quality standards, and livestock emission factors;

WHEREAS, HSC sections 40724.6(b) and (d) require that local air quality management and air pollution districts (local air districts) designated as nonattainment for the federal one-hour ozone national ambient air quality standard (NAAQS) as of January 1, 2004, must adopt rules that include, among other things, a requirement that large CAFs develop and implement an emissions mitigation plan;

WHEREAS, HSC section 40724.6(d)(1)(B) requires that emission mitigation plans required for large CAFs must demonstrate reasonably available control technology in moderate and serious areas, and best available retrofit control technology in severe and extreme nonattainment areas;

WHEREAS, HSC section 40724.6(e) requires that the local air districts, prior to adopting rules for large CAFs and to the extent data are available, perform an assessment of the impact of the rule and to consider among other provisions, the emission reduction

potential, the range of probable costs to affected sources and businesses, the cost-effectiveness and availability of alternatives, and the technical and practical feasibility of controls;

WHEREAS, HSC section 40724.7(a) requires that local air districts designated as attainment for the federal ozone standard are also required to develop a large CAF rule unless the local air district makes a determination that any large CAFs in the region will not contribute to a violation of any State or federal air quality standard;

WHEREAS, the ARB staff has developed the proposed large CAF definition set forth in Attachment A hereto after an evaluation of the scientific information on emissions and air quality impacts of livestock facilities, the needed air quality improvements in nonattainment areas, the severity of the air quality problem in different areas of California, and the potential regulatory impacts to the livestock industry;

WHEREAS, The San Joaquin Valley and the South Coast Air Basins present California's most challenging air quality problems for ozone and, based on the available science, both areas will need substantial new reductions in emissions of reactive organic gases (ROG) in order to meet the new federal eight-hour ozone standard;

WHEREAS, the federal eight-hour ozone standard has been exceeded in the San Joaquin Valley over 100 days in each of the past three years and the South Coast has had nearly as many annual exceedance days;

WHEREAS, both of these areas also exceed California's more stringent State air quality standards by an even larger margin;

WHEREAS, in developing the proposed definition of large CAF the staff focused on the emissions of ROG from large CAFs because of the contribution of ROG towards ozone formation in California;

WHEREAS, there is significant ongoing research associated with emissions factors of ROG from livestock operations, particularly with dairies, and the evaluation of ongoing research may result in emission factors that are higher or lower than the current emission factor;

WHEREAS, the total emissions of ROG from livestock operations in California are estimated to be about 46 tons per day, with over 60 percent of those emissions occurring in the San Joaquin Valley based on current emissions factors;

WHEREAS, about 80 percent (36 tons per day) of ROG emissions from livestock operations in California are associated with dairies based on current emissions factors;

WHEREAS, the proposed definition is based on the combined, aggregate ROG emissions of the livestock industry in California, with an emphasis on regions with the most severe air quality problems and the most significant livestock populations;

WHEREAS, the proposed regulation has separate definitions for federal nonattainment areas and other areas in California, based on air quality considerations;

WHEREAS, on May 6, 2005, a Staff Report: Initial Statement of Reasons incorporating public and stakeholder comments was published and made available to the public;

WHEREAS, the proposed regulations would also require, beginning January 1, 2006, the owner or operator of a large CAF to keep records that specify the numbers of animals maintained daily and such other information as may be required by local air district rules, maintain the records at a central place of business for a period of not less than three years, and make the records available upon request to the Executive Officer or Air Pollution Control Officer or their representative;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code and the Board has considered the testimony presented by interested persons and the staff;

WHEREAS, the Board finds that:

Confined animal facilities are significant sources of ROG emissions in California, particularly in the San Joaquin Valley;

Including large CAFs in the mitigation plan process is an important step in reducing ROG emissions, particularly in the San Joaquin Valley;

Consistent with the requirements of the Health and Safety Code, the proposed definition of a large CAF takes into account air quality, emission factors, industry impacts, livestock populations, facility size information, and other factors;

The proposed definition allows most of the animals to be included, while minimizing the total number of facilities affected;

The proposed definition provides clarity and certainty for the livestock industry and local air districts, and creates a productive environment for identifying the most cost effective and technically feasible emission reduction strategies;

The proposed definition's thresholds for all the livestock categories are appropriately scaled to be approximately equivalent in terms of facility emissions;

The proposed regulation is consistent with the provisions of SB 700 and will not have a significant adverse economic impact on the affected facilities or on other businesses or private persons affected;

The proposed regulation will not have an adverse impact on the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies associated with the ARB's environmental justice program; and

No reasonable alternative considered by the ARB, or that has otherwise been identified and brought to the attention of the ARB, would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed action.

WHEREAS, the Board further finds, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, that this regulatory action will not have any significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of new sections 86500 and 86501, title 17, California Code of Regulations, as set forth in Attachment A, subject to the directions below.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to make an adjustment, if appropriate, to the large CAF definition for feedlots to more accurately reflect the size distribution of cattle at beef feedlots consistent with methods used to establish the other large CAF definitions.

BE IT FURTHER RESOLVED that, if the Executive Officer determines that modifications to the regulations in the area listed above are not appropriate, she is directed to adopt the regulatory text set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that, if the Executive Officer determines that modifications to the regulations in the area listed above are appropriate, the Executive Officer is directed to incorporate the modifications into the approved regulatory text, with such other conforming modifications as may be appropriate, and then to make the modified regulatory language available for supplemental public comment for a period of 15 days or more; after considering any written comments regarding the modified text that are submitted during this period, the Executive Officer shall adopt the modified regulatory text after making further modifications as may be appropriate in light of the comments received, or present the regulations to the Board for further consideration if she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the staff to continue working with the local air districts, academic researchers, and other stakeholders on the development and evaluation of research on emissions factors from livestock operations, particularly dairies, to develop the most scientifically defensible emission factors in consideration of the available data.

BE IT FURTHER RESOLVED that the Board directs the staff to continue working with the local air districts and other stakeholders in developing the rules for emission mitigation plans and subsequent implementation of the plans to ensure that the resulting requirements meet the provisions set forth in the HSC.

BE IT FURTHER RESOLVED that the Board directs the staff to return to the Board within three years to update the Board on new developments in science and technology pertaining to emissions from large confined animal facilities.

I hereby certify that the above is a true and correct copy of Resolution 05-35, as adopted by the Air Resources Board.

Lori Andreoni, Clerk of the Board

Resolution 05-35

June 23, 2005

Identification of Attachments to the Board Resolution

Attachment A: Proposed Regulation Order - Definition of Large Confined Animal Facility (sections 86500 and 86501, title 17, California Code of Regulations), as set forth in Appendix A to the Staff Report: Initial Statement of Reasons, released May 6, 2005.