

State of California
AIR RESOURCES BOARD

Resolution 05-40

July 21, 2005

Agenda Item No.: 05-7-5

WHEREAS, Health and Safety Code section 39515 directs the Air Resources Board (Board or ARB) to appoint an Executive Officer who shall serve at the pleasure of the Board, and provides that the Board may delegate any duty to the Executive Officer that the Board deems appropriate, except that certain statutory reviews by the Executive Officer of district activities are subject to the California Administrative Procedure Act;

WHEREAS, Health and Safety Code section 39516 provides that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless it is shown that the Board, by affirmative vote recorded in its minutes, specifically has reserved the same for the Board's own action;

WHEREAS, Resolution 78-10, adopted by the Board on February 23, 1978, identifies specific powers, duties, purposes, functions and jurisdictions that the Board has specifically reserved unto itself;

WHEREAS, on occasion it is appropriate for ARB to enter into Memoranda of Understanding or similar agreements with the owners or operators of sources of air pollution to achieve emission reductions that are not practicable or possible to achieve by state or local regulation due to constraints on ARB's authority, primarily federal or international preemption (collectively referred to as MOUs);

WHEREAS, the Executive Officer of the ARB has entered into four such MOUs during the past seven years addressing 1) fleetwide average locomotive emissions in the South Coast Air Basin, 2) clean-up of ground service equipment at airports in Southern California, 3) marine vessel speed reduction off the coast of Southern California, and, most recently, 4) statewide emission and risk reduction at major railyards;

WHEREAS, while it remains appropriate for the Executive Officer to negotiate and enter into such MOUs on behalf of ARB, they can involve emission sources of great public and local community concern upon which stakeholders desire and expect an opportunity to be heard; and

WHEREAS, requiring ratification of all such MOUs and MOU amendments by the Board would assure an open public process where members of the public have the opportunity to express concerns and would also ensure ultimate ratification by a board comprised of direct appointees of the Governor.

NOW, THEREFORE, BE IT RESOLVED that in addition to the powers and duties reserved for the Board in Resolution 78-10, the Board also reserves unto itself the power to ratify any future MOU with air pollution sources for emission reductions, or to amend any MOU, prior to the MOU or amendment becoming effective.

BE IT FURTHER RESOLVED that the Executive Officer remains authorized to negotiate on and enter into future MOUs with air pollution sources for emission reductions, and any future amendments, subject to the condition that they shall not become effective until they are presented to and ratified by Board.

BE IT FURTHER RESOLVED that, prior to initiating negotiations on a MOU or amendment, the Executive Officer shall notify the Board and public and solicit public comment on the subject of the MOU or amendment; when the MOU or amendment is brought to the Board, ARB's Ombudsman shall report on the public involvement on the matter.

BE IT FURTHER RESOLVED that all MOUs and amendments previously signed by the Executive Officer and in effect as of this date of this resolution shall remain in effect, consistent with the terms of those MOUs, unless specific action is taken by the Board to withdraw from the MOU.

I hereby certify that the above is a true and correct copy of Resolution 05-40, as adopted by the Air Resources Board.

Lori Andreoni, Clerk of the Board