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RESOURCES AGENCY OF CALIFORNIA

State of California
AIR RESOURCES BOARD
Resolution 97-19

May 22, 1997

Agenda Item No: 97-4-2

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the "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, section 39607.5(a) of the Health and Safety Code requires the Board to develop and adopt a methodology for use by Air Pollution Control/Air Quality Management Districts (Districts) to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and area sources, including those issued under market-based incentive programs when those credits are used interchangeably;

WHEREAS, section 39607.5(b) of the Health and Safety Code requires the Board to ensure that the methodology results in the maintenance and improvement of air quality by requiring emission credits to be permanent, enforceable, quantifiable, and surplus to the reductions required to attain and maintain federal and state air quality standards, and is otherwise in compliance with Division 26 of the Health and Safety Code;

WHEREAS, section 39607.5(b) of the Health and Safety Code requires the Board to consider the viability of the trading process, opportunities for source flexibility and banking of credits, and the length of time that the credits are to be valid;

WHEREAS, sections 40920.6(c) and (d) of the Health and Safety Code require Districts to allow the retirement of emission reduction credits in lieu of compliance with best available retrofit control technology (BARCT) and other feasible emission control measures if specified criteria are met;

WHEREAS, the staff has developed a "Proposed Regulation To Establish A Statewide Methodology To Calculate The Value Of Emission Reduction Credits That Are Used Interchangeably" that would establish principles and criteria with which Districts must comply when developing programs to allow the interchangeable use of emission reduction credits;

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

WHEREAS, the staff has held public workshops and consultative meetings with the Districts, the California Air Pollution Control Officers Association, interested business and industry representatives, and environmental organizations in developing the proposed methodology;

WHEREAS, the staff has prepared an "Initial Statement of Reasons for Rulemaking" (staff report) that describes the bases and rationale for the elements of the proposed regulation and has made that staff report available for public comment at least 45 days in advance of the Board Hearing;

WHEREAS, a public hearing and other administrative proceedings were held in accordance with the provisions of Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2, of the Government Code;

WHEREAS, based upon the information presented by the staff and the public comments received, the Board finds that:

1. The generation and use of emission reduction credits can provide a cost-effective alternative for complying with certain District emission reduction requirements.
2. This regulation is necessary to ensure that the generation and use of emission reduction credits do not interfere with attaining and maintaining federal and state air quality standards and to provide flexibility and consistency to regulated entities by retaining the value of credits that are certified and banked for future use to meet applicable District requirements.
3. The regulation meets the requirements of section 39607.5 of the Health and Safety Code; specifically the regulation:
 - (a) ensures that the calculation methodology shall result in the maintenance and improvement of air quality consistent with Division 26 of the Health and Safety Code, including but not limited to the requirements of the California Clean Air Act set forth in sections 40910-40927; market-based incentive program criteria set forth in section 39616; programs governing Toxic Air Contaminants and Air Toxics "Hot Spots", as set forth in Chapter 3.5 and Part 6 of Division 26 of the Health and Safety Code, respectively; and District banking and offset systems, as set forth in sections 40709-40714.5;

- (b) allows for credit use in market-based incentive programs adopted pursuant to section 39616 of the Health and Safety Code, and allows the use of all those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use;
 - (c) ensures that the methodology does not provide for double-counting of emission reductions, nor provide for an additional discount of credits solely as a result of emissions trading if a district has already discounted the credit as part of its process of identifying and granting those credits to sources; and
 - (d) ensures that any credits shall be permanent, enforceable, quantifiable, and surplus.
4. Interchangeable credits used consistently with this regulation will, in the aggregate, not result in greater annual pollutant emissions than would have occurred without trading.
 5. District adoption and implementation of calculation protocols consistent with the principles and criteria contained in this regulation will ensure that emission credits are real, surplus, permanent, quantifiable, and enforceable.
 6. Emission reduction credits or market-based trading instruments that are generated under programs authorized by sections 39616 and 40440.1 can be used interchangeably if a study conducted by the District and concurred with by the Board determines that the interchangeable use of such credits meets all applicable requirements.

WHEREAS, the Board further finds that:

1. The proposed regulation is not anticipated to result in a significant adverse environmental impact due to emissions increases because any credits used to comply with specific District emission reduction requirements must yield reductions equivalent to or greater than the measure(s) they replaced.
2. The regulation does not allow the use of interchangeable credits to meet technology- or risk-based requirements such as BACT or air toxics control measures (ATCMs).

3. Generation and use of interchangeable credits in trades where toxic air contaminants are associated with criteria pollutants such as VOCs and PM may result in increases in emissions of toxic air contaminants and associated health risk.
4. The magnitude of potential increases in health risk from toxic air contaminants will be limited and shall not exceed District-established significance thresholds for facilitywide cancer risk or a facilitywide hazard index of one for non-cancer health effects.
5. The public disclosure requirements in the regulation and in CEQA ensure that information about localized air toxics impacts is available for consideration by the public and by District Governing Boards that establish thresholds for significant health risk at the local level.
6. There are no feasible mitigation measures or alternatives short of prohibiting trading of criteria pollutants which have a toxic air contaminant component that would substantially reduce the potential adverse impacts of the proposed regulatory action while at the same time providing businesses the opportunity to use emission reduction credits as a compliance option in lieu of meeting certain district requirements.
7. Specific economic considerations, i.e. the need to provide the regulated community with the compliance flexibility required by statute, outweigh the minor unavoidable environmental risks associated with potential increases in toxic air contaminants at specific facilities engaging in trading.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves a new Subchapter 5.5, sections 91500 through 91508, Title 17, California Code of Regulations, as amended by the Board and set forth in Attachment A hereto.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to adopt the provisions set forth in Attachment A after making them available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulation to the Board for further consideration if he determines this is warranted.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to send the adopted regulation to the Districts and provide assistance to any District that elects to develop an emission credit trading program in compliance with the adopted regulation.

BE IT FURTHER RESOLVED, that this regulation shall apply to any District that adopts, implements, or amends a rule or regulation that provides for the generation and use of interchangeable emission reduction credits to ensure that District emission credit trading programs comply with the principles and criteria established in this regulation.

BE IT FURTHER RESOLVED, that the Board directs staff to submit the adopted regulation to the Office of Administrative Law with a request that this regulation become effective upon filing with the Secretary of State in order to facilitate District development and adoption of interchangeable credit trading programs which they are authorized or required to adopt by law.

I hereby certify that the above is a true and correct copy of Resolution 97-19, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Clerk of the Board