

State of California  
AIR RESOURCES BOARD

Resolution 98-81

December 11, 1998

Agenda Item No.: 98-15-2

WHEREAS, title 17 California Code of Regulations (CCR), section 60040, et seq. establishes a process for adjudicatory hearings conducted for the purpose of reviewing Air Resources Board Executive Officer (Executive Officer) decisions ordering motor vehicle recalls pursuant to section 43105 of the Health and Safety Code and other provisions of law;

WHEREAS, the Executive Officer issued an order on September 2, 1998 to Toyota Technical Center U.S.A., Inc. and Toyota Motor Corporation (Toyota) to recall certain 1996 through 1998 model passenger cars and light-duty trucks equipped with on-board diagnostic II evaporative leak check diagnostics (recall order);

WHEREAS, Toyota filed a petition for an adjudicatory hearing to review the recall order on October 14, 1998 and the Executive Officer filed a response to Toyota's petition on November 3, 1998. In its petition Toyota requested that the hearing be referred to an administrative law judge from the Office of Administrative Hearings, and the Executive Officer did not oppose Toyota's request;

NOW, THEREFORE, BE IT RESOLVED that pursuant to title 17 CCR section 60046 the Air Resources Board (Board) hereby requests that an administrative law judge from the Office of Administrative Hearings conduct the hearing of this matter and prepare a recommended decision for consideration by the Board;

BE IT FURTHER RESOLVED that the Board finds pursuant to title 17 CCR section 600469 subsection (c) that is necessary to delay the hearing to obtain the services of an administrative law judge;

BE IT FURTHER RESOLVED that the Board designates Senior Staff Counsel Robert C. Jenne, of the Board's Office of Legal Affairs, who has not advised or assisted and who will not advise or assist the Executive Officer in connection with the recall order, to consult with the Executive Officer and Toyota and then to contact the Office of Administrative Hearings in accordance with title 17 CCR section 60046 to arrange for the retention of an administrative law judge from that Office to conduct an evidentiary hearing required in this matter and to take all other actions necessary to conduct the hearing or take actions otherwise authorized by title 17 CCR sections 60048 to 60051;

BE IT FURTHER RESOLVED that the administrative law judge retained for this matter shall also prepare proposed findings of fact and conclusions of the law for the Board's consideration in accordance with title 17 CCR section 60052, and take all actions authorized by title 17 CCR sections 60040-60053;

BE IT FURTHER RESOLVED that the administrative law judge retained for this matter shall commence an evidentiary hearing in this matter as expeditiously as possible, taking due account of the parties' proper interest in the exchange of information (including discovery as provided by the regulations or otherwise agreed by the parties) and the requirements of due process and any other requirements of law as provided in title 17 CCR sections 60040-60053, and Toyota's position that this matter involves complex issues of law and fact. The hearing shall commence at a time to be determined by the administrative law judge that allows sufficient time for the Executive Officer and Toyota to engage in this exchange of information and to review that information in order to prepare for the hearing; and,

BE IT FURTHER RESOLVED that after the hearing is conducted by the administrative law judge, the Air Resources Board shall issue a written decision in accordance with title 17 CCR section 60052.

I hereby certify that the above is a true and correct copy of Resolution 98-81, as adopted by the Air Resources Board.

*Pat Hutchens*

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Pat Hutchens, Clerk of the Board