

State of California  
AIR RESOURCES BOARD

**Resolution 04-46**

December 9, 2004

Agenda Item No.: 04-11-5

WHEREAS, at its regular March 25, 2004, meeting the Air Resources Board (ARB or Board) approved Resolution 4-14 (incorporated by reference herein), adopting new section 2011 in new article 3.5, within chapter 1, division 3, title 13, California Code of Regulations (CCR), and amending sections 2180.1, 2181, 2184, 2185, 2186, 2192, and 2194 of article 1 within chapter 3.5 division 3, title 13, CCR, which require low oxides of nitrogen (low NOx) software upgrades, or “reflashes” on certain 1993 through 1999 model year heavy-duty diesel engines and establish a mechanism for inspection and enforcement;

WHEREAS, the Board directed the Executive Officer to withhold filing the adopted regulatory sections with the Office of Administrative Law until the Board had reviewed an evaluation of the software upgrade voluntary program proposed at the March 2004 public hearing and attached to Resolution 4-14 as Attachment B;

WHEREAS, the voluntary program was designed to achieve immediate near-term emission reductions, and long-term reductions comparable to the adopted regulation;

WHEREAS, the voluntary program was a cooperative effort between vehicle owners, the California Trucking Association, California dealers and distributors, engine manufacturers, and ARB staff to install low NOx software upgrades on a voluntary basis;

WHEREAS, the voluntary program’s first target was to achieve 35 percent of the emission reduction benefits of the regulatory program from reflashes performed through October 28, 2004, with additional targets of 60 percent by May 31, 2005, 80 percent by January 1, 2006, and a final target of 100 percent by 2008;

WHEREAS, ARB staff and the California Trucking Association staff worked together in outreach efforts including targeted mailings, telephone calls, and regional events to promote the voluntary program to owners of 1993 through 1999 heavy-duty diesel vehicles including truck owners, motor home owners and school districts, as well as dealers and distributors authorized to install low NOx software;

WHEREAS, the engine manufacturers notified their authorized dealers and distributors regarding the voluntary program and worked with dealers and distributors to resolve implementation issues;

WHEREAS, each engine manufacturer was to submit a report on the number of vehicles reflashed from January 1, 2004, to August 31, 2004, on or before September 7, 2004, and was to submit a report on the number of vehicles reflashed from September 1, 2004, to October 27, 2004, on or before November 1, 2004;

WHEREAS, ARB staff evaluated the data submitted in the reports for the number of vehicles reflashed, the reflash rate by engine manufacturer, the reflash rate over time, and verified the number reflashed engines with California registration;

WHEREAS, ARB staff also calculated emission reduction benefits for the reflashed vehicles based on the data submitted by the engine manufacturers' reports; and

WHEREAS, the Board finds that:

1. Although the voluntary program did result in an increase in software upgrade installation over what would be expected in the absence of a voluntary program, it has not met the first program goal of achieving 35 percent of the emission reduction benefits of the regulatory program from reflashes performed through the November 1, 2004, reporting deadline.
2. The voluntary program does not appear to be on a sustainable path to meet the emission reductions needed to meet the next program target of May 31, 2005.
3. One manufacturer, Detroit Diesel Corporation (DDC), has met the first voluntary program target of the regulatory program from reflashes performed through the November 1, 2004, reporting deadline.
4. Based on its current rate of progress, commitment to continue the program, and plan to provide mobile reflashes, DDC appears to be on a sustainable path to achieve the emission reductions needed to meet future voluntary program targets.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby directs the Executive Officer to file with the Office of Administrative Law the regulatory sections set forth in Attachment A to Resolution 04-14, with the modifications directed by the Board and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days as required by Government Code section 11346.8, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if she determines that this is warranted after review of the comments.

BE IT FURTHER RESOLVED that the Board directs DDC to continue providing reflashes through the voluntary program, and to provide regular reports to the Executive Officer on meeting future voluntary program targets.

BE IT FURTHER RESOLVED that the Board directs staff to monitor DDC's progress toward meeting future voluntary program targets, and directs the Executive Officer to report back to the Board if she determined that DDC failed to meet a future target and thus became subject to the regulation.

I hereby certify that the above is a true  
And correct copy of Resolution 04-46, as  
Adopted by the Air Resources Board.

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Lori Andreoni, Clerk of the Board

Resolution 04-46

December 18, 2004

**Identification of Attachments to the Resolution**

**Attachment A to Resolution 04-14:**

PROPOSED REGULATION ORDER