

State of California
AIR RESOURCES BOARD

Resolution 06-43

December 7, 2006

Agenda Item No: 06-11-4

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the Board or ARB) 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, the Board adopted an Airborne Toxic Control Measure for Stationary Compression Ignition Engines (Stationary ATCM) and approved Resolution 03-30 on February 26, 2004;

WHEREAS, the Board adopted amendments to the Stationary ATCM and approved Resolution 06-39 on November 16, 2006;

WHEREAS, the Board adopted an Airborne Toxic Control Measure for Diesel-Fueled Portable Engines (Portable ATCM), and approved the Resolution 04-7 on February 26, 2004;

WHEREAS, in accordance with section 41750 et seq. of the Health and Safety Code, the Board has established, by regulation, a Statewide Portable Equipment Registration Program (PERP) providing for the voluntary registration of portable engines and associated equipment, establishing emission limits and emission control requirements, and a fee schedule to cover the costs of administering and enforcing PERP, including a fee for the recovery of the cost of district enforcement activities;

WHEREAS, section 41752(e) of the Health and Safety Code provides that the Board may periodically revise and update the Statewide Portable Equipment Registration Program Regulation (Statewide Regulation), including but not limited to, revising and updating a determination of the Best Available Control Technology (BACT) for portable engines;

WHEREAS, the Board adopted the Statewide Regulation and approved Resolution 97-16 on March 27, 1997;

WHEREAS, the Board adopted amendments to the Statewide Regulation and approved Resolution 06-18 on June 22, 2006;

WHEREAS ARB has amended the Statewide Regulation three times since the program's inception and each time ARB staff conducted outreach before and after each regulatory action including workshops throughout the State, teleconferences, and meetings with interested parties;

WHEREAS, prior to the most recent amendments, the ARB staff mailed 25,000 informational brochures about the PERP program to individuals licensed by the California Contractors State License Board; 1,600 to companies on ARB's electronic listserv for the Statewide Regulation; 1,200 to the Construction Industry Air Quality Coalition (CIAQC); and electronic copies to two public works associations, 35 air districts, and approximately 1,100 public works agencies for forwarding to other affected industry and stakeholders;

WHEREAS, the Board received comments from affected industry during the ARB's September 28, 2006 Board meeting that raised concerns regarding implementation of the Statewide Regulation and the Portable ATCM;

WHEREAS, the Board received comments from the affected industry during the ARB's November 16, 2006 board meeting that raised concerns regarding implementation of the Stationary ATCM, including the ability to purchase current tier engines before and after changes in an emissions standard;

WHEREAS, despite the outreach and noticing efforts, some owners and operators of portable equipment have stated that they were not aware of the requirements to purchase cleaner complying engines and obtain district permits to operate or registration as provided in the Statewide Regulation;

WHEREAS, owners and operators of portable equipment that did not purchase cleaner complying engines and obtain district permits to operate or registration, as provided in the Statewide Regulation, operated at a competitive advantage compared to owners and operators that did pay registration or permitting fees and/or purchased cleaner complying engines;

WHEREAS, during the periods when complying engines are not available, engine owners are unable to obtain a permit for or register an engine that complies with the Stationary ATCM, the Portable ATCM, or the Statewide Regulation;

WHEREAS the Stationary ATCM and Portable ATCM have established increasingly stringent (tiered) emission standards that are phased in over time, of which several have become effective recently;

WHEREAS, the impact on business owners who have been unable to purchase a compliant engine would be severe if they must wait until the normal rulemaking process is completed because they will not be able to conduct business;

WHEREAS, the ARB staff has worked closely with the air pollution control districts and air quality management districts (districts), and the affected industry to collect and evaluate the most current information regarding concerns about implementation of the Statewide Regulation, the Portable ATCM, and the Stationary ATCM;

WHEREAS, staff has proposed emergency amendments to the Stationary ATCM and the Portable ATCM to allow for compliance dates to be extended during those instances where it can be verified that complying engines are not available;

WHEREAS, staff has proposed emergency amendments to the Portable ATCM and Statewide Regulation to provide an extension of a registration deadline for owners or operators who order engines prior to an emissions standards change, but cannot take possession of the engines until after such change;

WHEREAS, proposed emergency changes to the Statewide Regulation, Stationary ATCM, and Portable ATCM were developed through discussions with affected industry and districts; and

WHEREAS, staff has proposed emergency amendments that allow modified registration conditions and fee schedules to address the concerns of some owners and operators of portable equipment who have stated that they were not aware of the requirements to purchase cleaner complying engines and obtain district permits-to-operate or registration as provided in the Statewide Regulation;

WHEREAS, staff has proposed emergency amendments to the Stationary ATCM, Portable ATCM, and the Statewide Regulation, set forth in Attachments A, B, and C hereto.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the proposed emergency amendments as set forth in Attachments A, B, and C hereto.

BE IT FURTHER RESOLVED that the regulations be submitted to the Office of Administrative Law (OAL) as emergency regulations, and that the Executive Officer prepare a "Finding of Emergency" in compliance with Government Code section 11346.1(b).

BE IT FURTHER RESOLVED that the Board directs the staff to continue its ongoing outreach efforts, to inform stationary and portable engine users and owners, equipment dealers and distributors, engine manufacturers, and other interested stakeholders about complying with the Statewide Regulation, the Stationary ATCM and the Portable ATCM.

BE IT FURTHER RESOLVED that the Board directs the staff to immediately initiate a rulemaking following a timetable under which the Board may consider and adopt appropriate permanent regulatory amendments which become operative within 120 days of the effective date of the emergency regulations adopted herein.

I hereby certify that the above is a true and correct copy of Resolution 06-43, as adopted by the Air Resources Board.

Lori Andreoni, Clerk of the Board

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December 7, 2006

Identification of Attachments to the Resolution

Attachment A: Proposed Emergency Amendments to the Statewide Regulation for the Statewide Portable Equipment Registration Program Regulation as distributed at the December 7, 2006 hearing

Attachment B: Proposed Emergency Amendments to the Airborne Toxic Control Measure for Diesel Particulate Matter from Portable Engines Greater Than 50 Horsepower as distributed at the December 7, 2006 hearing

Attachment C: Proposed Emergency Amendments to the Airborne Toxic Control Measure for Stationary Compression Ignition Engines as distributed at the December 7, 2006 hearing