

State of California
AIR RESOURCES BOARD

Resolution 80-44

September 25, 1980

WHEREAS, Sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board to adopt standards, rules, and regulations necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Section 43106 of the Health and Safety Code requires that each new production motor vehicle or engine required to meet the California emission standards established pursuant to Section 43101 of the Health and Safety Code be, in all material respects, substantially the same in construction as the test motor vehicle or engine certified by the Board;

WHEREAS, manufacturers of motor vehicles and engines intended for sale in California have, according to applicable certification procedures, demonstrated durability to meet the applicable emission standards for the useful life of the motor vehicle or engine;

WHEREAS, Section 43204 of the Health and Safety Code requires the manufacturer of each motor vehicle and motor vehicle engine to warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle or engine is:

- (1) Designed, built, and equipped so as to conform at the time of sale with the applicable emission standards, and
- (2) Free from defects in materials and workmanship which cause such motor vehicle or motor vehicle engine to fail to conform with the applicable regulations for its useful life;

WHEREAS, the claim has been made by the Bureau of Competition of the Federal Trade Commission and others that the Board's warranty regulations will have an anti-competitive effect on independent aftermarket parts manufacturers and repair facilities;

WHEREAS, the California Legislature in Senate Concurrent Resolution 9 requested that the Board examine, among other things, any anti-competitive effects of its warranty regulations;

WHEREAS, the Board is concerned that the warranty regulations may have such an anti-competitive effect, and recognizes the concerns of the Legislature and the aftermarket service industry in this regard;

WHEREAS, the Board, in responding to the concerns of the aftermarket and repair industries, created a Warranty Advisory Group for the purpose of monitoring data related to the economic effects of the regulations, and directed the group to report back to the Board;

WHEREAS, the Warranty Advisory Group has submitted its final report to the Board and has found that no apparent economic shift to dealers and away from the independent aftermarket is presently occurring as a result of these regulations;

WHEREAS, the Board finds that no evidence has been presented which demonstrates that the warranty regulations have had or will have any significant anti-competitive effects;

WHEREAS, the Board reaffirms its previous findings that its warranty regulations in the main are effective and necessary to ensure that vehicles sold in California are emissions durable and hence benefit air quality;

WHEREAS, the Board, after receipt of further information, reaffirms its previous findings that carburetion and ignition systems are significant parts of vehicle emissions control systems;

WHEREAS, the Board finds that it is appropriate for the regulations to clarify the penalty which results from violation of the warranty regulations;

WHEREAS, the Board finds that vehicle manufacturers should be encouraged to allow their designated warranty stations to use replacement parts in warranty repairs in addition to the replacement parts they themselves manufacture;

WHEREAS, the California Environmental Quality Act and Board regulations require that no proposed action be adopted as proposed if the proposed action would cause significant environmental harm and mitigation measures are feasible;

WHEREAS, the Board finds that no significant environmental harm will result from adopting the amendments to the regulations;

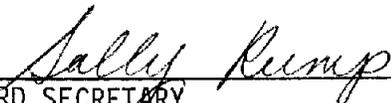
WHEREAS, a public hearing and other proceedings have been held in accordance with applicable provisions of the Government Code.

NOW, THEREFORE BE IT RESOLVED, that the Board hereby amends its regulations in Chapter 3, Title 13, California Administrative Code, as set forth in Attachment A hereto;

BE IT FURTHER RESOLVED, that the staff is directed to monitor and if necessary to develop evidence relating to concerns that the warranty regulations will have an anti-competitive effect, and upon the receipt or development of evidence that the warranty regulations will have an anti-competitive effect, to propose to the Board amendments designed to mitigate such effects;

BE IT FURTHER RESOLVED, that the Board hereby determines that the regulations adopted above are individually, and in the aggregate, at least as protective of public health and welfare as applicable federal regulations.

I certify that the above is a true and correct copy of Resolution 80-44, as adopted by the Air Resources Board.


BOARD SECRETARY

EMISSIONS WARRANTY REGULATIONS

2035. Purpose, Applicability, and Definitions. (a) The purpose of this article is to interpret and make specific the statutory emissions warranty set forth in Health and Safety Code Section 43204 by clarifying the rights and responsibilities of individual motor vehicle and motor vehicle engine owners, motor vehicle and motor vehicle engine manufacturers, and the service industry.

(b) This article shall apply to:

(1) California certified 1973 and subsequent model year motorcycles, light-duty, medium-duty, and heavy-duty vehicles, registered in California and;

(2) California certified motor vehicle engines used in such vehicles.

(c) For the purposes of this article, the following definitions shall apply:

(1) "Useful life" means:

(A) In the case of Class I motorcycles and motorcycle engines (50 to 169 cc or 3.1 to 10.4 cu. in.), a period of use of five years or 12,000 kilometers (7,456 miles), whichever first occurs.

(B) In the case of Class II motorcycles and motorcycle engines (170 to 279 cc or 10.4 to 17.1 cu. in.), a period of use of five years or 18,000 kilometers (11,185 miles), whichever first occurs.

(C) In the case of Class III motorcycles and motorcycle engines (280 cc and larger or 17.1 cu. in. and larger), a period of use of five years or 30,000 kilometers (18,641 miles), whichever first occurs.

(D) In the case of diesel-powered heavy-duty vehicles (except medium-duty vehicles), and motor vehicle engines used in such vehicles, a period of use of five years, 100,000 miles, or 3000 hours of operation, whichever first occurs.

(E) In the case of light-duty and medium-duty vehicles certified under the Optional 100,000 Mile Certification Procedure, and motor vehicle engines used in such vehicles, a period of use of ten years or 100,000 miles, whichever first occurs.

(F) In the case of all other light-duty, medium-duty and heavy-duty vehicles, and motor vehicle engines used in such vehicles, a period of use of five years or 50,000 miles, whichever first occurs, or such other period as may be specified by statute or regulation.

(2) "Warranted part" means any emissions-related part installed on a motor vehicle or motor vehicle engine by the vehicle or engine manufacturer which is included on the "Emissions Warranty Parts List" required by Section 2036(b) and approved for the vehicle or engine by the Executive Officer.

(3) "Vehicle or engine manufacturer" means the manufacturer granted certification for a motor vehicle or motor vehicle engine. In the case of motor vehicles for which certification of the exhaust and evaporative emission control systems is granted to different manufacturers, the warranty responsibility shall be assigned accordingly.

2036. Warranty and Vehicle Owner Information. The manufacturer of each motor vehicle or motor vehicle engine shall:

(a) Warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is:

(1) Designed, built, and equipped so as to conform, at the time of sale, with all applicable regulations adopted by the Air Resources Board pursuant to its authority in Chapters 1 and 2, Part 5, Division 26 of the Health and Safety Code; and

(2) Free from defects in materials and workmanship which cause the failure of a "warranted part" to be identical in all material respects to that part as described in the vehicle or engine manufacturer's application for certification.

(b) ~~Commencing with~~ For 1980 and later models sold on or after September 1, 1979, furnish with each new vehicle or engine written instructions for the maintenance and use of the vehicle or engine by the owner, which instructions shall be consistent with this article and applicable regulations in Article 2 of this subchapter.

(c) ~~Commencing with~~ For 1980 and later models sold on or after September 1, 1979, furnish with each new vehicle or engine a list of the "warranted parts" installed on that vehicle or engine. The list shall include those parts included on the Air Resources Board "Emissions Warranty Parts List," dated December 14, 1978, and incorporated herein by reference.

(d) ~~Commencing with~~ For 1980 and later models sold on or after September 1, 1979, furnish with each new vehicle or engine a warranty statement which generally describes the obligations and

rights of vehicle or engine manufacturers and owners under this article. For 1982 and later model vehicles, in addition to other information required under these regulations, the manufacturer must included in that description the statement that the vehicle owner may obtain routine maintenance, repairs, and other nonwarranty work at any repair facility, or may perform the work himself or herself. This statement shall make clear that such nonwarranty work need not be performed at a designated warranty station in order for the warranty to remain in force.

(e) Except for 1980 and 1981 model motorcycles, submit the documents required by subsections (b), (c), and (d) with the manufacturer's preliminary application for new vehicle or engine certification for approval by the Executive Officer. The Executive Officer may reject or require modification of the manufacturer's list of "warranted parts" to ensure that each such list is of proper scope and also may reject or require modification of any of the documents required by subsection (b) or (d). Approval by the Executive Officer of the documents required by subsections (b), (c), and (d) shall be a condition of certification. The Executive Officer shall approve or disapprove the documents required by subsections (b), (c), and (d) within 90 days of the date such documents are received from the manufacturer. Any disapproval shall be accompanied by a statement of the reasons therefor. In the event of disapproval, the manufacturer may petition the Board to review the decision of the Executive Officer.

(f) Notwithstanding subsection (c), the Executive Officer may delete any part from a manufacturer's list of "warranted parts" provided

the manufacturer demonstrates to the Executive Officer's satisfaction that:

(1) Failure of such part will not increase the emissions of any vehicle or engine on which it is installed; and

(2) Any deterioration of driveability or performance which results from failure of the part could not be corrected by adjustments or modifications to other vehicle components.

(g) Notwithstanding subsection (c), the Executive Officer, following public hearing, may add any part to the "Emissions Warranty Parts List" if:

(1) Such part was not in general use on 1979 model motor vehicles manufactured for sale in California; and

(2) Such part is an emissions-related part as defined in Section 1900(b)(4), Title 13, California Administrative Code.

2037. Motor Vehicle and Motor Vehicle Engine Manufacturer's Obligations. Subject to the conditions and exclusions of Section 2041, the warranty on emissions-related parts shall be interpreted as follows:

(a) Any "warranted part" which is not scheduled for replacement in the written instructions for required maintenance that are required by Subsection 2036(b) shall be warranted for the useful life of the vehicle or engine. If any such part fails during the useful life period, it shall be repaired or replaced by the vehicle or engine manufacturer according to Subsection (d).

(b) Any "warranted part" which is scheduled only for regular inspection in the written instructions for required maintenance that are required by Subsection 2036(b) shall be warranted for the useful life of

the vehicle or engine. A statement in such written instructions to the effect of "repair or replace as necessary" shall not reduce the period of warranty coverage.

(c) Any "warranted part" which is scheduled for replacement in the written instructions for required maintenance that are required by Subsection 2036(b) shall be warranted for the scheduled time or mileage, whichever first occurs, of the first scheduled replacement point for that part. If such a part fails during the first scheduled period, the part shall be repaired or replaced by the vehicle or engine manufacturer according to Subsection (d) below.

(d) Repair or replacement of any "warranted part" under the warranty provisions of this article shall be performed at no charge to the vehicle or engine owner, at a service establishment authorized by the vehicle or engine manufacturer to perform warranty repairs (hereinafter referred to as a "warranty station"), except in the case of an emergency when a "warranted part" or a "warranty station" is not reasonably available to the vehicle or engine owner. In an emergency, repairs may be performed at any available service establishment, or by the owner, using any replacement part. The manufacturer shall reimburse the owner for his or her expenses, not to exceed the manufacturer's suggested retail price for all warranted parts replaced and labor charges based on the manufacturer's recommended time allowance for the warranty repair and the geographically appropriate hourly labor rate. Heavy-duty vehicle and engine manufacturers shall establish reasonable emergency repair procedures which may differ from those specified in this subsection. A vehicle or

engine owner may reasonably be required to keep receipts and failed parts in order to receive compensation for warranted repairs reimbursable due to an emergency, provided the manufacturer's written instructions advise the owner of this obligation.

(e) Notwithstanding the provisions of Subsection (d), warranty services or repairs shall be provided at all of a manufacturer's dealerships which are franchised to service the subject vehicle or engines.

(f) To the extent required by any Federal or California law, whether statutory or common law, a vehicle manufacturer shall provide a means for service facilities other than the manufacturer's dealerships to perform warranty repairs.

~~(f)~~ (g) The vehicle or engine owner shall not be charged for diagnostic labor which leads to the determination that a "warranted part" is in fact defective, provided that such diagnostic work is performed at a "warranty station".

~~(g)~~ (h) The vehicle or engine manufacturer shall be liable for damages to other vehicle components proximately caused by a failure under warranty of any "warranted part".

~~(h)~~ (i) Throughout the vehicle or engine's useful life time period, the vehicle or engine manufacturer shall maintain a supply of "warranted parts" sufficient to meet the expected demand for such parts. The lack of availability of such parts within a reasonable time period, not to exceed 30 days, shall constitute an emergency for purposes of Subsection (d).

~~(i)~~ (j) Any replacement part may be used in the performance of any maintenance or repairs. Any replacement part designated by a manufacturer may be used in warranty repairs provided without charge to the vehicle owner. Such use shall not reduce the warranty obligations of the vehicle or engine manufacturer, except that the vehicle or engine manufacturer shall not be liable under this article for repair or replacement of any replacement part which is not a "warranted part" (except as provided under Subsection ~~(g)~~ (h)). Manufacturers are encouraged whenever possible to designate replacement parts in addition to those they themselves manufacture.

~~(j)~~ (k) Any add-on or modified part exempted by the Air Resources Board from the prohibitions of Vehicle Code Section 27156 may be used on a vehicle or engine. Such use, in and of itself, shall not be grounds for disallowing a warranty claim made in accordance with this article. The vehicle or engine manufacturer shall not be liable under this article to warrant failures of "warranted parts" caused by the use of such an add-on or modified part.

~~(k)~~ (l) The Executive Officer may request and, in such case, the vehicle or engine manufacturer shall provide any documents which describe that manufacturer's warranty procedures or policies. For 1981 and later model vehicles, these policies shall comply with Sections 2035-2042, inclusive, of Title 13, California Administrative Code.

2038. Vehicle Owner Obligations. (a) The owner of any vehicle or engine warranted pursuant to this article shall be responsible for the performance of all scheduled maintenance specified in the written

instructions furnished to the owner pursuant to Subsection 2036(b). Such maintenance may be performed by the owner, at a service establishment of the owner's choosing, or by a person or persons of the owner's choosing.

(b) Except as specified in Subsection 2040(a), failure of the vehicle or engine owner to ensure the performance of such scheduled maintenance or to keep maintenance records shall not, per se, be grounds for disallowing a warranty claim.

~~2039.---Vehicle-Inspection-Program---This-section-shall-apply-to passenger-cars,-light-duty-trucks-and-medium-duty-vehicles-required-to be-inspected-pursuant-to-the-Motor-Vehicle-Inspection-Program-(MVIP) established-pursuant-to-Sections-9889.50-et.-seq.;-of-the-California Business-and-Professions-Code.~~

~~(a)---The-owner-of-such-a-vehicle-which-fails-in-the-inspection during-its-useful-life-may-choose-to-have-the-vehicle-repaired-at-a warranty-station:~~

~~(1)---If-the-warranty-station-identifies-that-the-MVIP-failure-was caused-by-the-failure-or-malfunction-of-a-"warranted-part";-then-the vehicle-manufacturer-shall-be-liable-for-all-expenses-involved-in detecting-and-correcting-the-part-failure-or-malfunction.---Unless-the warranty-station-demonstrates-that-the-part-failure-or-malfunction-was caused-by-abuse;-neglect;-or-improper-maintenance-as-specified-in Subsection-2041(a);-or-was-caused-by-an-improper-adjustment-as-specified in-Subsection-2031(b):~~

~~(2)---If-the-warranty-station-demonstrates-that-the-MVIP-failure was-caused-by-one-or-more-of-the-conditions-excluded-from-warranty~~

~~coverage pursuant to Section 2041, the vehicle owner shall be liable for all diagnostic and repair expenses. Such expenses shall not exceed the maximum repair costs permissible under the MVIP.~~

~~(3) If the warranty station identifies that the MVIP failure was caused by one or more defects covered under warranty pursuant to these regulations in combination with one or more conditions excluded from warranty coverage pursuant to Section 2041, then the vehicle owner shall not be charged for that portion of the diagnostic and repair costs related to detecting and repairing the warrantable defects.~~

~~(b) In the alternative, the owner of a vehicle which fails an MVIP inspection may choose to have the vehicle repaired somewhere other than at a warranty station. If a warrantable defect is found, the vehicle owner may deliver the vehicle to a warranty station and have the defect corrected free of charge. The vehicle manufacturer shall not be liable for any diagnostic expenses incurred at a service establishment not authorized to perform warranty repairs, except in the case of an emergency as specified in Subsection 2037(d).~~

2040. 2039. Mediation; Finding of Defect. (a) This section is intended to provide a mechanism for mediating unresolved emissions warranty disputes between vehicle or engine owners and dealers or vehicle or engine manufacturers.

(b) A vehicle or engine owner may request that the Executive Officer mediate a warranty claim.

(1) Upon receipt of such a claim the Executive Officer, or the Executive Officer's representative, may make a determination regarding whether the claim is meritorious on its face and, if meritorious, shall

notify the appropriate dealer, or vehicle or engine manufacturer of the claim. The party against whom a complaint is made shall be given a reasonable time in which to respond. The Executive Officer may conduct an informal conference, and may request additional information and evidence.

(2) Upon examination of the facts submitted by the parties concerned, the Executive Officer, or the Executive Officer's representative, may find that a "warranted part" is defective and is eligible for warranty service or replacement pursuant to this article. If such a finding is made, a Finding of Defect shall be issued for the part.

(3) The Finding of Defect shall include the name of the vehicle owner, vehicle manufacturer and model (including model year, make, car line and body type), vehicle identification number, engine family, odometer reading, date of inspection, identification of the defective part and the signature of the person issuing the Finding.

~~2047~~ 2040. Exclusions. (a) The repair or replacement of any "warranted part" otherwise eligible for warranty coverage under Section 2037 ~~or~~-2039, shall be excluded from such warranty coverage if the vehicle or engine manufacturer demonstrates that the vehicle or engine has been abused, neglected, or improperly maintained, and that such abuse, neglect, or improper maintenance was the direct cause of the need for the repair or replacement of the part.

(b) The repair of a "warranted part" otherwise eligible for warranty coverage under Section 2037 ~~or~~-2039 shall be excluded from such warranty coverage if:

(1) Such repair consists solely of adjustments to the idle air/fuel mixture ratio, curb or high idle speed, ignition timing, valve lash, injection timing for diesel-powered vehicles, or any combination thereof; and

(2) Such repair is not listed in Subsection (c) below as a warranted adjustment.

(c) Except as provided in Subsection (a) above, the following adjustments are eligible for warranty coverage under Section 2037; or 2039;

(1) For 1980 and subsequent model year passenger cars, and 1981 and subsequent model year light-duty trucks and medium-duty vehicles: idle air/fuel mixture adjustment of any carburetor.

(2) For all motor vehicles: any adjustment of a component which has a factory installed, and properly operating, adjustment limiting device (such as an idle limiter cap).

2041. Penalties. Any person who violates a provision of these regulations shall be subject to fines specified under Health and Safety Code Section 43016.

2042. Severability. Each part of this article shall be deemed severable, and in the event that any part of this article is held to be invalid, the remainder of this article shall continue in full force and effort.

Memorandum

To : Huey D. Johnson
Secretary
Resources Agency

Date : November 3, 1980

Subject: Filing of Notice of
Decision of the Air
Resources Board

From : Air Resources Board

Pursuant to Title 17, Section 60007(b), and in compliance with Air Resources Board certification under section 21080.5 of the Public Resources Code, the Air Resources Board hereby forwards for posting the attached notice of decision and response to environmental comments raised during the comment period.



Sally Rump
BOARD SECRETARY

Attach: ~~Resolution 80-55~~
Resolution 80-55

RECEIVED BY
Office of the Secretary

NOV 3 1980

Resources Agency of California

State of California
AIR RESOURCES BOARD

Response to Significant Environmental Issues

Item: PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO TITLE 13,
CALIFORNIA ADMINISTRATIVE CODE, SECTIONS 2035-2042, REGARDING
WARRANTY OF EMISSIONS-RELATED COMPONENTS OF VEHICLES

Public Hearing Date: September 24, 1980

Response Date: September 25, 1980

Issuing Authority: Air Resources Board

Comment: None raised.

Response: None

CERTIFIED:

Sally Rump
Sally Rump
Board Secretary

10/29/80
(Date)

RECEIVED BY
Office of the Secretary

NOV 3 1980

Resources Agency of California

State of California
AIR RESOURCES BOARD

Opposing Considerations and Agency Response

Public Hearing Dates: September 24, 1980 and September 25, 1980

PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO TITLE 13, CALIFORNIA ADMINISTRATIVE CODE, SECTIONS 2035-2042, REGARDING WARRANTY OF EMISSIONS-RELATED COMPONENTS OF VEHICLES

Opposing Consideration: Several manufacturers of aftermarket automotive parts and several representatives of the independent automotive service industry urged the Board to narrow the scope of its current warranty regulations by reducing the number of parts that must be warranted and/or reducing the length of time for which they must be warranted.

Agency Response: The current regulations and list of warranted parts was adopted at previous Board hearings based on findings by the Board that all parts required to be warranted have an effect on emissions and therefore are within the scope of Health and Safety Code Section 43204 and must be warranted for the vehicle's useful life. No evidence was presented that either challenged the Board's past findings of the necessity of the current regulations for air quality benefits, or demonstrated the anti-competitive effects of the current regulations. On receipt or development of significant evidence on either of these issues, the Board, within the scope of its authority under Section 43204, will reconsider relevant portions of the regulations.

Opposing Consideration: The Federal Bureau of Competition testified that anti-competitive effects of the regulations could be minimized and air quality benefits retained or increased if the Board dropped enforcement of the statutory defects warranty and instead enforced a performance

warranty analogous to the federal performance warranty. Some other witnesses also urged enactment of a performance warranty.

Agency Response: Current state law requires a defects warranty, and the Board cannot ignore this statutory requirement. Furthermore, California has not enacted an annual vehicle inspection and maintenance program, which is necessary to carry out a performance warranty. The Board could not adopt the Bureau's suggestions because of this lack of authority. If an annual inspection and maintenance program is enacted, Board staff is directed to give further consideration to the Bureau's suggestion.

Opposing Consideration: Representatives of the independent service industry testified that the staff's proposals to: 1) require vehicle manufacturers to establish criteria for designation of independent service facilities as stations designated to perform warranty work reimbursable by vehicle manufacturers; and 2) require vehicle manufacturers to pay for diagnostic work done at independent facilities, were impractical and unworkable. They cited problems of adequate timely reimbursement and difficulty of becoming designated as warranty stations, among others. They opposed the staff proposals.

Agency Response: The Board declined to adopt the proposals objected to by these witnesses.

Opposing Consideration: Several vehicle manufacturers and representatives testified that the proposals that would require them to designate independent service facilities as warranty stations and to pay for diagnostic work done at nondealers were beyond the legal authority of the Board to

enact. They also testified that the proposals would greatly increase the cost of providing warranty coverage and would subject vehicle manufacturers to financial and legal liability for work whose cost and quality they could not control. The manufacturers expressed their belief that the testimony and data available to the Board also did not support these amendments because they did not demonstrate clear and significant anti-competitive effects from the current regulations that would justify the amendments.

Agency Response: The Board declined to adopt these proposals but directed staff to continue to monitor the effects on competition of the warranty regulations.

Opposing Consideration: Vehicle manufacturers and representatives testified that they considered unworkable the proposal that would require them to allow use of replacement parts in warranty work other than the parts they themselves manufacture. The manufacturers testified that this proposal would require the vehicle manufacturer to warrant the performance of parts whose quality they could not control. They also feared that costs of the warranty program would increase if manufacturers could not control selection of the parts used in warranty repairs. Finally, they argued that the proposal is beyond the Board's legal authority to adopt and conflicts with state and federal product warranty statutes.

Agency Response: The Board declined to adopt the proposal. Instead, the Board adopted an amendment urging but not requiring manufacturers to allow use in warranty work of replacement parts other than those the manufacturers themselves produce.

Opposing Consideration: Heavy duty engine manufacturers testified that, for the vehicles they manufacture, the proposals requiring manufacturers to designate independent facilities as warranty stations and requiring manufacturers to pay for diagnostic work done by independents are unworkable. They argued that even if such proposals are appropriate for passenger cars or other light and medium-duty vehicles, that the complexity of heavy-duty engines makes it extremely difficult for independents to perform diagnostic or warranty repair work on them. They urged the Board to exempt heavy-duty engines from these proposals.

Agency Response: The Board declined to adopt the proposals for any vehicle or engine category.